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THE recent decision of the Supreme Court of Missouri, in the Laclede Gas-light Company case, involving the validity of a late ordinance of the city of St. Louis, restricting the charges of that company to 90 cents per thousand feet of gas, has been criticised by some and considered by others, not conversant with its scope, as of like character with recent decisions of the United States Supreme Court, involving the power of municipal or State legislatures to regulate charges by public or *quasi* public corporations. The fact is, however, that the decision in no respect touches upon this question. The ordinance in question was declared invalid upon the plain and well established proposition of law, that a power to fix its charges given by charter to a corporation was a contract which cannot be diminished by subsequent legislative action, whether State or municipal. The effect, in other words, is the same as if the State, in granting the charter, had set a price at which the company might sell gas, and then declared that the powers thus granted should be exempt from subsequent alteration or repeal. In addition to its legislative charter, an ordinance of the city was passed later, which authorized the Gas-light Company to charge $1.25 per thousand for gas furnished. The court holds also that this ordinance, when accepted by the Gas-light Company, constituted a valid contract between that company and the city of St. Louis, which could not thereafter be abrogated by ordinance. The point in the case seems to us almost too plain for argument, and we are curious to read the dissenting opinion of Judge Barclay, who was the sole dissentient, and who announced that he would express his views hereafter.

THE decision of the Supreme Court of Indiana, in the case of Bedford Bank v. Acoam, reported on page 33 of this issue, and the note thereto, will show, we think, that a good court may sometimes go wrong. In taking the position, contrary to the ruling in that case, that a banker has no right to apply money on deposit in his bank to the payment of a note of the depositor, payable at the bank, without the order of the depositor, we believe that we are upheld both by reason and the preponderance of authority, at least in this country. The fact is, that we have not found a case decided by any court in this country which unequivocally sustains the position taken by the Supreme Court of Indiana upon the question.

IT may be of interest to call attention to the fact that a bill is now pending in congress, to amend, in some particulars, the act of 1887, for the removal of causes from State to federal courts. The bill introduced proposes to make two amendments to the existing statutes for the removal of causes. The first amendment proposed, requires that a party applying for a change or removal must give his adversary five days' notice of his purpose to apply. The other amendment provides that, where jurisdiction is conferred on the federal courts by the citizenship of the parties alone, to entitle a party to secure the removal of the case, the amount in controversy must exceed $2,000. It will be noted that the amendments restrict rather than enlarge jurisdiction. There are many who think that the existing law is susceptible of very substantial amendment, if not of absolute substitution.

THE learned editor of the *London Law Quarterly Review*, calls attention to the fact that the judges who decided the case of Cochrane v. Moore, reported in full with annotation in our last issue, were so occupied in investigating the principles of the law of England governing the gift of chattels by word of mouth, that they forgot to consider the equally interesting question whether the case was, according to the principles of English law, governed by the territorial law of England (*lex domicilii*), or by the territorial law of France (*lex situs.*) He claims that there is a good deal to be said for either opinion. The donor and the donee were (we presume) both domiciled in England. The gift, on the other

hand, took place in France, and the horse of which a share was given was, at the time when the present was made, in France. There is authority in the way of general *dicta* for asserting that a valid assignment of chattels depends upon the *lex domicilii* of the assignor. But these *dicta* refer to general assignments, *e. g.*, in consequence of death or marriage, and there is, it is believed, no English case definitely ruling that a gift or sale of an individual movable, depends for its validity on the *lex domicilii*. On the other hand, there is the authority of some of the weightiest writers on private international law, such, for example, as Savigny and Westlake, for asserting that the validity of such a gift is determined by the *lex situs*, and there are English cases which point in the same direction. It is, therefore, maintainable that the question really calling for decision in Cochrane v. Moore, was one which the court never considered.

NOTES OF RECENT DECISIONS.

REMOVAL OF CAUSES—CORPORATION—RESIDENCE.—The recent decision of Shiras, J., in the case of Myers v. Murray, Nelson & Co., 43 Fed. Rep. 695, in the United States Circuit Court for the Southern District of Iowa, in dissenting from the doctrine of Hirschl v. Threshing Machine Co., 31 Cent. L. J. 92, makes an important change in the law governing the removal of causes from State to federal courts by corporations. Until the decision in the Hirschl case, by Justice Miller, it had been the settled doctrine that a corporation could be a resident only of the State under whose laws it was created. This doctrine was laid down in Fales v. Railroad Co., 32 Fed. Rep. 673; Booth v. Manufacturing Co., 40 Fed. Rep. 1, but Justice Miller ruled, in the Hirschl Case, that for the purpose of suing and being sued, it may become a resident in each State in which it does business under State law, and that when a corporation of one State is sued in the court of another State, a petition for removal by it is not sufficient, unless it alleges, in addition to the usual averments as to citizenship, that it is a non-resident of the State in which it is sued. A contributor, who prepared the note to the Hirschl Case at the time it was reported in this JOURNAL (31 Cent. L. J. 93), took the position that the decision in question would practically require all corporations to litigate in the State courts, which has undoubtedly been the case. The decision in the present case, of Meyers v. Murray, Nelson & Co., is to the effect that a corporation, though carrying on business in several States, can have a residence only in the State in which it was created; so that the averment that a corporation was created under the laws of a certain State, precludes the idea that it may have become a resident of another State, and is sufficient in a petition for removal of a cause from a State to a federal court. This was in effect overruling the Hirschl Case, and upon the authority of the following decisions, namely: Insurance Co. v. Francis, 11 Wall. 210; *Ex parte* Schollenberger, 96 U. S. 377; Railroad Co. v. Koontz, 104 U. S. 5; Pennsylvania Ry. Co. v. St. L., A. & T. H. Ry. Co., 118 U. S. 290; Muller v. Dows, 94 U. S. 444.

NEGOTIABLE INSTRUMENT — FRAUD — BURDEN OF PROOF—INNOCENT PURCHASER.—The case of Canajoharie National Bank v. Diefendorf, 25 N. E. Rep. 402, decided by the New York Court of Appeals, has aroused some criticism in banking circles. It was there laid down that where the maker of notes has shown that they were procured from him by fraud, the burden is upon the holder to show that he is an innocent purchaser for value. That negotiable notes offered to a cashier of a bank before maturity were made by a farmer whom he knew, and who had no outside business to call for such large transactions, that they had been executed in a city two hundred miles from his home, and were offered for discount by an utter stranger; *held*, were sufficient to put the cashier upon inquiry; and where he purchased them without the least investigation, the jury were warranted in finding that the bank was not an innocent holder for value, although it paid about eighty-five per cent. of the face of the notes. The *Albany Law Journal* says on the subject of this case:

> The case of Canajoharie National Bank v. Diefendorf, decided by the court of appeals of this State, and reported in full in this journal last week, has aroused some criticism, and in some quarters has been thought opposed to the general current of

authority on the question. There can be no doubt of the general proposition that when the maker or indorser of a note shows that it was made or indorsed for a special purpose, from which it has been wrongfully diverted, the burden of proof is shifted to the holder to show that he was ignorant of the diversion; he cannot recover by simply showing that he paid value before maturity. This is the law, we believe, in spite of a rather incautious *obiter dictum* to the contrary in Dalrymple v. Hildebrand, 62 N. Y. 11; S. C. 20 Am. Rep. 438. In the present case the holding is simply that certain circumstances of suspicion appearing, it was properly left to the jury to say whether they imposed on the holder the duty of inquiry. We do not see any thing wrong or unusual in this. It is merely a holding that the question is one of fact. The holding in question is not nearly so strong as that in Ormsbee v. Howe, 54 Vt. 182; S. C., 41 Am. Rep. 841, which was that a note obtained by fraud and duress, and without consideration, is void in the hands of a third person who is a a general purchaser of the payee's notes and cognizant of his fraudulent practices in obtaining them.

PENSION MONEY—EXECUTION—EXEMPTION.—The case of Crow v. Brown, 46 N. W. Rep. 993, decided by the Supreme Court of Iowa, not only overrules many previous decisions of the courts of that State, but places that court on the subject of exemption of pension money from execution, in opposition to the prevailing authorities in this country. The decision there is, that property purchased by a pensioner with his pension money, is exempt from execution and sale for his debts under Rev. St. U. S. § 4747, providing that it "shall inure wholly to the benefit of the pensioner." The court says that Foster v. Byrne, 35 N. W. Rep. 513; Triplett v. Graham, 58 Iowa, 135; Baugh v. Barrett, 69 Iowa, 495; Farmer v. Turner, 64 Iowa, 690, were improperly decided, and that since the final opinion in Foster v. Byrne was rendered, the *personnel* of the court has been changed, and upon full examination of the question the majority of the court are of the opinion that such pension money is exempt from execution. Robinson, J., dissents from the majority of the court in the present case, and, as we think, upon substantial grounds. The United States statute referred to, reads that "no sum of money due or to become due to any pensioner, shall be liable to attachment, levy, etc." The language used makes it clear that the exemption contemplated by the statute applies only to money due or to become due, and that it was not intended to act upon the pension money after it reaches the control of the pensioner. This view is in harmony with the cases of Rozelle v. Rhodes, 116 Pa. St. 134; Friend v. Garcelon, 77 Me. 26; Crane v. Linneus, 77 Me. 61; Cranz v. White, 27 Kan. 319; Jordain v. Association, 44 N. J. Law, 376; Robion v. Walker, 82 Ky. 61; Faurote v. Carr, 108 Ind. 126; Spellman v. Aldridge, 126 Mass. 117; Hissem v. Johnson, 27 W. Va. 672. The case of Folschow v. Werner, 51 Wis. 87, is the only case supporting the view of the majority of the Iowa court, and that case was predicated upon the case of Eckert v. McKee, 9 Bush, 355, which was overruled by Robion v. Walker, *supra*. The power of congress to exempt from execution pension money after its payment to the pensioner, is a questionable one, and has been doubted in Webb v. Holt, 57 Iowa, 716, Hissem v. Johnson, *supra*, and Cranz v. White, *supra*. The question was referred to, but not determined in United States v. Hall, 98 U. S. 343, that case going no further than to hold that congress may enact laws to protect pension money until it shall have passed into the hands of the pensioner. The power to enact laws which shall have the effect given to the statute under consideration by the opinion of the majority of the court in the present case, is not expressed in the constitution, and if possessed by congress is an implied or incidental one. The fact that if exercised it would create in many of the States a new class of exemptions, is contrary to the general policy of congress not to interfere unnecessarily with the domestic affairs of the States, and is an additional reason that congress did not intend to exempt property in the hands of the pensioner purchased with pension money. See on this general subject, 31 Cent. L. J. 324. It is almost unnecessary to state that decisions like Yates County National Bank v. Carpenter, 31 Cent. L. J. 2, where the question of exemption was one under the State statute, is not in point with the question here determined.

RAILROAD COMPANIES—INJURIES TO PERSONS ON TRACK.—The case of Toomey v. Southern Pac. Ry. Co., 24 Pac. Rep. 1074, decided by the Supreme Court of California, is of interest as showing the very slight consideration given by courts to the right of a trespasser on a railroad track. It appeared in that case that decedent, while walking along a railroad track without license, was run

into and killed at a distance of one hundred and fifty yards from a crossing behind him, from which direction the train was coming. The engine was in a reversed position, and there was no head-light or cow-catcher on the tender. The bell was not rung, nor was the whistle blown at the crossing, though provided for by statute. Had such signals been given, decedent would probably have heard them and escaped injury. He was not seen by the trainmen until after the accident. It was held that decedent was a mere trespasser, to whom the company owed no duty, and therefore it was not liable. Haynes, C., says, *inter alia:*

The deceased having been a mere trespasser, the defendant did not owe him the duty of doing acts to facilitate his trespass or to render it safe. It is to be observed here that we are not saying that the fact that he was a trespasser would justify the infliction of a willful or wanton injury upon him. It is well settled that the commission of a trespass does not justify the infliction of an injury by way of punishment or revenge, or out of mere recklessness. Nor are we saying that a railroad company is not bound to use ordinary care after seeing the dangerous position of a trespasser. No such principle is involved in this case. For it appears, not only that the employees on the train did not see the deceased until after the accident, but, by reason of the darkness, could not in all probability have done so. What we say is that the company does not owe to a mere trespasser upon its track the duty of doing acts to facilitate his trespass or render it safe. In other words, it is not bound to provide any particular kind of machinery or appliances for his benefit, or (when not aware of his presence) to give cautionary signals to notify him of the approach of its trains. And we do not put this upon the ground of contributory negligence, which would imply that the defendant as well as the deceased was guilty of negligence in a legal sense. We put it upon the ground that the defendant owed no duty to the deceased to do the acts whose omission is complained of. What we conceive to be the true rule was clearly stated by McKee, J., in Tennenbrock v. Railroad Co., 59 Cal. 269, in which the plaintiff was walking upon the defendant's trestle, and was injured while trying to escape from a train which had failed to whistle on approaching the trestle. The other justices of the department, however, "concurred in the judgment" on the ground of contributory negligence. In the subsequent case of Williams v. Railroad Co., 72 Cal. 120, the plaintiff was injured while lying drunk near the rails. It was conceded by his counsel that he was a trespasser, and that the company did not owe him the duty of looking out for him; and the court adopted this concession, and went on to inquire whether there was a want of ordinary care after seeing him. If these cases could be regarded as decisive of the proposition, it would not be necessary to pursue the subject further. But, as already stated, the opinion of McKee, J., was not concurred in by the other justices. And in reference to the Williams Case, it is insisted for the plaintiff that the concession of counsel does not make the law, and that the proposition is unsound in principle and contrary to previous decisions. In view of these criticisms, we have examined the question without regard to the cases referred to. The proposition that mere omissions do not amount to negligence, in a legal sense, unless there was a legal duty to do the act, is fundamental, and it must necessarily be true; for if there was no duty to do the act—in other words, if the party was not bound to do it—he had a right to omit it, and he cannot be held liable for omitting something which he had a right to omit. In this regard the language of Pollock is expressive and apt. "For mere omissions," he says, "a man is not, generally speaking, held answerable. Not that the consequences or the moral gravity of an omission are necessarily less. * * * But, unless he is under some specific duty of action, his omission will not in any case be either an offense or a civil wrong." Pol. Torts, 352. See also Cooley Torts, 659, 660; Add. Torts, 953; Whart, Neg. § 3; Railroad Co. v. Bingham, 29 Ohio St. 369; Railroad Co. v. Monday, 49 Ark. 261; Nicholson v. Railroad Co., 41 N. Y. 529. If this proposition be true, the question reduces itself to this: Did the defendant owe to the deceased the duty of doing the acts whose omission is complained of? We think not.

DEED — ACKNOWLEDGMENT — FILLING OF BLANK.—One point in the case of State v. Matthews, 25 Pac. Rep. 36, decided by the Supreme Court of Kansas, is worthy of note. The question in the case was as to obtaining money under false pretenses, by the giving of what was charged to be an illegal and invalid mortgage, by the improper filling up of blanks. The question was, under the facts, whether the mortgage was a valid instrument, and it was held that where a deed of conveyance of real estate, perfect in form, except that the grantee's name is left blank, is duly executed and acknowledged, and afterwards the blank is filled contrary to the instructions of the grantor, and to his or her injury, with the name of a person not intended by the grantor to be the grantee, and with full knowledge on the part of such substituted grantee, that the deed is void as to such substituted grantee, or as to any one with notice of the fraud. Valentine, J., says:

We suppose that it will be conceded by all that a deed or mortgage or any other instrument affecting real estate, where the name of the grantee, mortgagee, or vendee, is left blank, is void, so long as such blank remains. Some courts hold that if the instrument is afterwards filled up in accordance with the directions of the maker it is valid, whether it is filled up in his presence or absence, whether before or after its delivery, whether such directions are in writing or only in parol, and whether with or without the knowledge of the party holding under the instrument; but other courts hold otherwise. Upon these questions the decisions of the courts are not uniform. We believe, however, that all the courts hold that if the instrument is filled up contrary to the directions of the maker and to his injury, and with full knowledge on the part of the party who takes and holds under it, the instrument will be held to be absolutely null and

void as to him. Ayres v.Probasco, 14 Kan, 175; Schintz v. McManamy, 33 Wis. 299; Upton v. Archer, 41 Cal. 85. See, also, the following; Drury v. Foster, 2 Wall. 24; Whitaker v. Miller, 83 Ill. 381; Simms v, Hervey, 19 Iowa, 274. On the other hand, however, it is generally held that if the instrument is filled up in accordance with the instructions, written or oral, of the maker, in his presence or absence, before or after its delivery, and under it the property at that time or afterwards comes into the hands of some innocent and *bona fide* holder for value,the instrument will be held valid. Knaggs v. Martin, 9 Kan. 532; Chapman v. Veach, 32 Kan. 167, 4 Pac. Rep. 100; McClain v. McClain, 52 Iowa, 272. 3 N. W. Rep. 60; Field v. Stagg, 52 Mo. 534; Ragsdale v. Robinson, 48 Tex. 380; Van Etta v. Evenson, 28 Wis. 33; Schintz v. McManamy, 33 Wis. 299; Pence v. Arbuckle 22 Minn. 417. But none of the foregoing cases is the present case. In the present case, the directions of the maker with reference to filling the blank were oral. The instrument was filled up in the absence of the maker, and not in accordance with, but contrary to, her directions, and to her injury; but the parties now claiming benefits under it, Louisa Havens and Jonathan Thomas (she having acted through her agent, Jonathan Thomas, and he having acted personally and for her), acted innocently and in good faith, and without the slightest knowledge of Matthews' fraud, or of the imperfections or infirmities of the instrument when it left the hands of the maker, Mary J. Wallace, and they parted with value on the strength of the instrument as it appeared when they or either of them first saw it, and as the maker, Mary J. Wallace, and her agent, Matthews, made it to appear. In all such cases the weight of authority is that the instrument will be held to be valid to the extent of the innocent party's rights under it, or the rights which he or she would have under it if it were valid. Chapman v. Veach, 32 Kan. 167, 4 Pac. Rep. 100; Pence v. Arbuckle, 22 Minn. 417; Garland v. Wells, 15 Neb. 298, 18 N. W. Rep. 132; Clark v. Allen, 34 Iowa, 190; Swartz v. Ballou, 47 Iowa, 188. This is founded upon the general principle of law often announced by courts, and which has become axiomatic—"That whenever one of two innocent persons must suffer loss on account of the wrongful acts of a third, he who has enabled the third person to occasion the loss must be the person who shall suffer." Jordan v. McNeil, 25 Kan. 465; 2 Herm. Estop. §§ 766, 767, and the numerous cases there cited. Upon this same principle it is almost universally held that whenever an instrument is procured from one person by the fraud or villainy of another, even if such fraud or villainy should amount to a criminal offense, is all the rights which the instrument apparently gives should at that time, or afterwards, be transferred to another who should be an innocent and *bona fide* holder for value, the innocent and *bona fide* holder could enforce the instrument against the maker, although the maker might also be an innocent person. Jordan v. McNeil, 25 Kan. 459; McNeil v. Jordan, 28 Kan. 7; Ort v. Fowler, 31 Kan. 478, 2 Pac. Rep. 580; Chapman v. Veach, 32 Kan. 167, 4 Pac. Rep. 100; McNab v. Young, 81 Ill. 12; Tisher v. Beckwith, 30 Wis. 55. In such a case the maker would be estopped from claiming that the instrument was void as against the innocent *bona fide* holder. There may be some authorities that hold a contrary doctrine, but, if so, we do not choose to follow them. The prosecution cites, among others, the following: Ayres v. Probasco, 14 Kan. 175; Howell v. McCrie, 36 Kan. 636, 14 Pac. Rep. 257; Drury v. Foster, 2 Wall. 24; Whitaker v. Miller, 83 Ill. 281; Upton v. Archer, 41 Cal. 85; Tisher v. Beckwith, 30 Wis. 55; Taylor v. Davis, 72 Mo. 291; Simms v Hervey, 19 Iowa, 274; Wilcox v. Howell, 44 N. Y. 398. While it is possible that some of these authorities are to some extent in conflict with the views herein expressed, yet generally, we think, they arenot in conflict, but are in harmony therewith.

CRIMINAL LAW—HOMICIDE—RIGHT TO BAIL AFTER INDICTMENT—CONSTITUTIONAL LAW.—A question that frequently arises in the administration of criminal law is as to the right of one charged with homicide to give bail after indictment and prior to trial. It was held by the Supreme Court of Colorado, in *In re* Losasso, 24 Pac. Rep. 1080, that under Bill of Rights Colo. § 19, declaring "that all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great," one charged with murder in the first degree is bailable, even after indictment, if the proof is not evident nor the presumption great, and it is the duty of the judges to hear evidence for the purpose of determining whether or not the prisoner should be bailed. Helm, C. J., says:

The question now presented for consideration is whether or not one charged with murder of the first degree, the punishment for which offense is death, may be admitted to bail after indictment and prior to trial. The practice in the different courts of the State with reference to this subject is not uniform. The present judges of the second judicial district, where petitioners are held in custody, are of opinion that the indictment is conclusive against the right to bail, and therefore decline to consider any application therefor. On the other hand, the judges in most, if not all, of the remaining districts frequently entertain such applications, hear evidence thereon, and occasionally admit to bail. In view of these conflicting opinions and inconsistent holdings, it is important that a definite rule should be announced, so that the procedure in the premises may be uniform throughout the State. It is difficult to determine precisely what the common-law rules on the subject of bail were when provisions, such as will be hereafter considered and are now made constitutional, were first adopted in this country. Mr. Blackstone says: "It is agreed that the court of king's bench (or any judge thereof in vacation) may bail for any crime whatsoever, be it treason, murder, or any other offense, according to the circumstances of the case." Book 4, ch. 22, p. 299. And he mentions no exception predicated upon the finding of an indictment. But it seems to be well settled that that court, as a matter of course, refused bail in all capital cases after return of a true bill, unless some special circumstance, usually arising subsequent to such action, supervened; also, that in no felony, after indictment, was bail regarded or allowed as a matter of right. The foregoing practice of the court of king's bench, in relation to capital offenses, has become a fixed rule in California, Louisiana, New York, Iowa, and North Carolina. It is held in those States that after indictment for a capital felony the presumption

of guilt is so strong as to be conclusive against admission to bail. State v. Mills, 2 Dev. & B. 552; Hight v. U. S., 1 Morris (Iowa), *407; Territory v. Benoit, 1 Mart. (La.) 142; People v. McLeod, 1 Hill, 377; People v. Tinder, 19 Cal. 539. We have only discovered two cases in the federal courts directly upon this question viz., U. S. v. Jones, 3 Wash. C. C. 224, and the celebrated trial of Aaron Burr for treason. In the former case, Jones, one of the defendants, was admitted to bail upon the ground of illness; but as to Reese, another of the defendants, Mr. Justice Washington disposes of the application, without argument, in the following language: "The bill of indictment being found, we do not feel ourselves at liberty to inquire into the evidence against it." Upon return of the indictment against Aaron Burr, application for bail was made to Chief Justice Marshall, who presided throughout the trial. The learned chief justice remarked (see page 94) that he "had never known a case similar to the present when such an examination had taken place." He also insisted "upon the necessity of producing adjudged cases to prove that the court could bail a party against whom an indictment had been found." But on page 95, he is represented as saying: "I have only stated my present impression. This subject is open for argument hereafter." Mr. Burr was thereupon committed to jail, and whether subsequently any authorities were cited or arguments heard upon the question we are not advised. No ruling thereon, or further reference thereto, appears in the volume. It is a significant circumstance that there was at this time (A. D. 1807) in Virginia, where Burr was tried, no such constitutional provision on the subject of bail as now exists in this and other States. In U. S. v. Stewart, 2 Dall. 343 (A. D. 1795), upon this question, language is used which seems to concede the possibility of an examination for admission to bail in such cases, but the point was not necessarily involved, and the decision cannot be considered authority. Precedents from the federal courts upon the subject in hand thus appear to be extremely meager and unsatisfactory; but, so far as the federal cases go, they point to a sanction of the common-law rule. The supreme courts of the following States, however, have promulgated different doctrine: Alabama, Arkansas, Florida, Illinois, Indiana, Mississippi, Ohio, South Carolina, and Texas. The view adopted in these States is that the indictment, even in capital cases, is simply presumptive evidence of the guilt of the party charged, and that courts should, upon application, hear proofs, and, if the presumption be overcome, admit to bail. *Ex parte* Hammock, 78 Ala. 414; *Ex parte* White, 9 Ark. 222; Thrasher v. State (Fla., 1890), 7 South. Rep. 847, Lynch v. People, 38 Ill. 494; *Ex parte* Kendall, 100 Ind. 599; Street v. State, 43 Miss. 1; State v. Summons, 19 Ohio, 139; State v. Hill, 3 Brev. 89; Yarborough v. State, 2 Tex. 519. Each of the foregoing lists of cases from the State courts might be largely augmented by other decisions of the same tribunals; but, as the opinions referred to express what is believed to be the law at the present time in the States mentioned, additional citations therefrom are deemed necessary. Although the above reference to adjudicated cases shows contrariety of judicial opinion on the subject before us, it may fairly be said that the preponderance of authority in this country is against the common-law doctrine. And we think this preponderance of authority is more in harmony with the policy and purpose of modern constitutional and legislative action. It must be borne in mind that the legal penalty for crime is inflicted only upon conviction, and that the object of imprisonment before trial is safe-keeping, not punishment. If the presence of the accused for trial could be otherwise assured, imprisonment would doubtless be entirely dispensed with. So anxious were the framers of the constitutions, State and federal, to guard against abuses in this direction, that they prohibited the exaction of "excessive bail;" *i. e.*, more than will be reasonably sufficient to prevent evasion of the law by flight or concealment. It is likewise to be remembered that trial does not and cannot, as a rule, so speedly follow presentment, in this and other rapidly growing western commonwealths, as in England, where the common-law doctrine under considerarion had its origin. Most, if not all, of the State constitutions, now contain provisions substantially similar to section 19 of our bill of rights, which reads as follows: "That all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident, or the presumption great." It will be observed that this constitutional provision is entirely silent as to the *status* of the prosecution. It does not say that upon indictment for a felony, or for a particular kind of felony, the beneficent privilege conferred is with drawn. On the contrary, its terms are broad enough to include persons accused of any crime whatever, after as well as before indictment. The only exception expressly made has reference to capital offenses, but this exception is wholly inoperative if the proof of guilt be not evident, and the presumption great. Had the framers of the constitution intended to provide that the indictment should be conclusive in capital cases, they would, in all probability, have said so. A simple declaration to this effect would have avoided all doubt and embarrassment. We must look outside of the language employed in the constitution for authority sustaining the position that in any case the indictment alone is conclusive against the prisoner's right to bail. The view affirming such conclusiveness is doubtless drawn by supposed analogy and precedent from the common law. But it is universally conceded that the constitutional provision, in effect, though not in words, changes the common law so as to confer an absolute right to bail after indictment in all other felonies. Proofs may be required in determining the amount of bail, but the right thereto is no longer a matter of judicial inquiry or discretion. Is it not equally reasonable, and equally in harmony with established rules of construction, to suppose that a change was also intended in the character of the presumption furnished by the indictment in capital cases? If the common-law rule is so relaxed that what was formerly, at most, a matter of judicial discretion is now a matter of absolute right, may it not be that that which formerly constituted a conclusive presumption should now be regarded as *prima facie* proof only? The language of the exception itself would seem to sustain this conclusion. It clearly implies an investigation by some tribunal into the sufficiency of the proofs. Bail as a matter of right is denied; but, when some competent authority ascertains by inquiry that the proof is not evident, and the presumption great, its allowance is imperatively commanded. That the tribunal, or authority possessing the power of admitting to bail, should make this inquiry, is not an unreasonable deduction.

Two principal grounds are mentioned for the view that in capital cases upon return of the bill bail must be denied with out investigation. The first, being he one relied on in the English decisions, is thus

clearly given by the court in Lord Mohun's Case, 1 Salk. 104: "If a man be found guilty of murder by the coroner's inquest, we sometimes bail him, because the coroner proceeds upon depositions taken in writing, which we may look into; otherwise if a man be found guilty of murder by a grand jury because the court cannot take notice of their evidence, which, they, by their oath, are bound to conceal." The second ground is briefly stated in People v. Hyler, 2 Park. Crim. R. 570, as follows: "Because to open the whole question of guilt or innocence to proof in an action to admit to bail would be attended with the most serious inconvenience." Both of these objections are forcible, and would, under different circumstances, doubtless be worthy of grave consideration. The first is based, however, upon the established practice of the English courts of limiting the examination for bail to a review of evidence taken before the committing tribunal. No such practice is required by the constitutional provision under consideration; nor, so far as we are advised, is it generally adhered to by the courts of this country. The second objection is more serious, and, if the courts possessed entire freedom of action in regard to the matter, would be very persuasive. The regular trial is, to a limited extent at least, anticipated. While the guilt or innocence of the accused is not to be determined, the quantity and character of the proofs on this point are, for the special purpose in hand, necessarily considered. Occasionally much time is thus consumed, and the court's attention is correspondingly diverted from other business. But these objections cannot avail against a positive constitutional command; if the constitution requires the court to determine for itself whether or not the proof is evident or presumption great in a given case, all considerations of expediency or convenience, however potent they might be at common law, must give way. The English cases, and the American cases adopting the English rule, all concede the right to be heard upon an application for bail after commitment by a coroner's inquest or an examining magistrate. The character and scope of the inquiry are in many instances circumscribed, yet the right to be heard is nevertheless unquestioned. But, under our practice, it would ordinarily accord more nearly with justice to hold the finding of a coroner's inquest or a commiting magistrate conclusive as to the clearness of guilt than the report of a grand jury. In the former cases, the accused may appear in person and by counsel. He may be heard in argument, may produce evidence, and make his own statement. But the proceedings of a grand jury are inviolably secret and wholly *ex parte*, evidence for the State being alone received. The accused is not present, and in many instances is ignorant of the fact that charges against him are being considered. He cannot be represented by counsel, or be heard upon the legality or bearing of the evidence adduced. The officer employed by the State to prosecute exercises a large influence in the selection of witnesses to testify; gives the only legal advice, unless the court be called upon; and usually directs to a considerable extent the entire proceeding. The rule that the proof of guilt thus offered and weighed should be *pro forma* treated as "evident," and that the presumption thus arising should in the same manner be pronounced "great," is largely a legal fiction. It finds little support in reason.

GIFTS CAUSA MORTIS.

Gifts *causa mortis*, being, as they are in the nature of legacies and without the safeguards of testamentary dispositions, have, within the last century, become of so frequent occurrence that they are worthy of a more extended consideration than they have as yet received at the hands of most authors.

Their origin is to be found in the Roman or civil law. The barriers thrown around these gifts by that law were well calculated to prevent fraud and perjury. Among other things it was requisite by the civil law to constitute valid gifts *causa mortis*, that they should have been executed in the presence of at least five witnesses. Thus they were reduced to the similitude of legacies. That provision of the civil law has not been adopted into the common law of this country or of England.

In the early development of the common law, few cases involving the validity of these gifts arose, but in more recent times they have not only arisen and been adjudicated, but the authorities, although uniform as to many requisites, are conflicting as to others. Swinburne, in his work on wills, page 24, gives the following definition of gifts made in contemplation of death: "Where a man "moved with the consideration of his mortal- "ity doth give and deliver something to an- "other to be his, in case the giver dies or "otherwise if he live, he to have it again." He says: "Of gifts in case of death there "may be three sorts—one where the giver "not terrified with fear of any present peril, "but moved with a general consideration of "man's mortality giveth anything;—another, "when the giver, being moved with imminent "danger, doth so give that straightways it is "made his to whom it is given. The third is when "any one being in peril of death doth give "something, but not so that it shall presently "be his that received it, but in case the giver "do die.—This, third, last kind of gift is that "which is compared to a legacy. But the "other two are reputed simple gifts, if the "giver do not make express mention of his "death, and so they cannot be revoked, but "take full effect from the time of the making "of the gift, if the same be not fraudulent."

In Tate v. Hilbert,[1] this definition of Swin-

[1] 2 Vessey, 120.

burne is discussed, and the first two classes are held to be ordinary gifts, *inter vivos*, only, and under no circumstances gifts *causa mortis*.

Blackstone, in his Commentaries, Book 2, page 514, defines a gift *causa mortis* as follows: "Where a person in his last sickness, "apprehending his dissolution near, delivers "or causes to be delivered to another the "possession of any personal goods (under "which have been included bonds and bills "drawn by the deceased upon his banker), to "keep in case of his decease. This gift, if "the donor dies, needs not the assent of his "executor, yet it shall not prevail against "creditors, and is accompanied with this im-"plied trust, that if the donor lives the prop-"erty thereof shall revert to himself, being "only given in contemplation of death, or *mortis causa*." In support of "the statement that bills drawn by a deceased person upon his banker" have been held to be the proper subject-matter of such gifts, he cites the case of Lawson v. Lawson.[2] In that case a man lying on his death-bed, drew a bill on his goldsmith to pay his wife one hundred pounds for mourning—held "that it was a good ap-"pointment." The decision, itself, is a very weak one, and the reasons advanced in support of it are very unsatisfactory. Moreover, the rule laid down in that case was before the court in Ward v. Turner,[3] and was in the most emphatic language overruled.

Chancellor Kent, in his Commentaries, Vol. 2, Part 5, page 559, speaking of gifts *causa mortis*, says: "Such gifts are conditional, "like legacies, and it is essential to them that "the donor make them in his last illness or in "contemplation, and with reference to their "effect after his death, they are good not-"withstanding a previous will, and if he re-"covers the gift becomes void.—The appre-"hension of death may arise from infirmity, "or old age, or from external or anticipated "danger."

It is almost impossible to frame a definition of such a gift. However, for the purposes of this thesis, the following is submitted as approximating a good definition of a *donatio mortis causa*: A *donatio mortis causa* is where a person in his last illness, and in apprehension of death, then imminent, doth intend to make a gift, and doth actually deliver the subject-matter of the gift to the donee or another for him, said gift to take effect immediately and absolutely, subject to the conditions subsequent which the law annexes to such gifts.

Under the above statement, four questions of importance arise, as follows:

1st. Under what circumstances can such a gift be made?

2d. What may be the subject-matter of such gifts?

3d. What is an actual delivery in the sense above used?

4th. What are the conditions subsequent, which the law annexes to such gifts?

These questions will be considered in the order above stated. 1st. Under what circumstances can such a gift be made?

There is little or no dispute in England or in this country as to the conditions which must arise before such a gift can be made. The rule, as laid down, seems to be this: that the donor should make the gift in his last illness, and in contemplation and expectation of death.[4]

In the 51 Pa. St. 350, the court say: "It "is evident that the language used by the au-"thorities in speaking of 'in contemplation of "death;' 'in expectation of death' or 'in ap-"prehension of death' apply to the case of "illness ending in death, the last illness "which makes it a death-bed disposition." This is sustained by 64 Pa. St. 24.

Chancellor Kent, as before stated, has in his Commentaries said that "the apprehension "of death may arise from infirmity or old "age, or from external or anticipated dan-"ger." In support of this doctrine he refers to Justinian's Institutes. It is quite true, as has been before stated, that under the civil law the apprehension of death need not necessarily have arisen from an illness, from which the donor was suffering at the time he made the gift. But after a careful search of the authorities, both English and American, no case has been found which upheld any

[2] Decided in 1717, and reported in the 1st of Peere Williams, at page 441.

[3] 2 Vessey, Jr., 431.

[4] Of the many authorities which support this rule are: 3 Peere Williams, 358; 2 Vessey, Sr. 431; Book 2 Blackstone's Commentaries, at page 514; 17 Me. 287; 23 Pa. St. 59; 25 Ill. App. 136; 1 Mylne & Craig, 226; 2 Vessey, Jr., 111; 10 Conn. 480; 51 Pa. St. 345; 107 U. S. Rep. 606.

other than the rule above laid down as the true test. However Chancellor Kent came to put forth that proposition, it is safe to say that it is not now and never has been the law in the United States.

2d. As to what may be the subject-matter of a gift *causa mortis*:

Any personal chattel, which is *in esse*, and is capable of manual delivery, has always been held to be a proper subject-matter of such a gift. As at common law, *choses in action* were not assignable, so in the early cases it was held that they were not the proper subject-matter of such a gift.

In Miller v. Miller,[5] and in Pathrick v. Freind,[6] the doctrine that *choses in action* were not the proper subject-matter of such a gift, was announced. The first English case to announce the rule that bonds and the like could thus be given was that of Snellgrove v. Bailey.[7] In Hirst *et al.* v. Beach *et als*,[8] it was held "that a delivery up of mortgage "deeds does not cancel the debt, but the de- "livery up of such deeds, and a bond given "at the time of the mortgage, for the purpose "of releasing or acquitting the debt in case "the donor should not recover from the ill- "ness with which he was then afflicted was an "effectual *donatio mortis causa*." From the time of the decision in the case of Snellgrove v. Bailey, the courts have continually been enlarging the rule as to *choses in action*. In this country certain classes of *choses in action* have always been held to be the proper subjects of such gifts. Bonds, bills of exchange, promissory notes (although payable to order and unindorsed), mortgage deeds accompanied by the notes they secure, policies of life insurance and certificates of deposit issued by a bank have all been held to pass by such a gift.[9]

The Supreme Court of the United States in the case of Baskett v. Haskell,[10] in a very able and learned opinion by Justice Matthews say: "The first point which is made clear "by this review of the decisions on the sub- "ject, as to the nature and effect of the de- "livery of a *chose in action*, is, as we think, "that the instrument or document must be "the evidence of a subsisting obligation, and "be delivered to the donee so as to vest him "with the equitable title to the fund which "it represents." The test seems to be that the *chose in action* delivered must be an evidence of a subsisting obligation, it must represent something which if delivered itself, would be the proper subject-matter of such a gift. It must be such a *chose in action*, as would give an assignee thereof, the right, at law or in equity, to reduce the fund it represents to possession.

A distinction must here be observed between obligations in which the donor is obligor and those in which he is obligee or assignee. The preceding decisions and rules apply only to the latter kind.

Upon the questions as to whether the testator's own note can be made the subject of such a gift, the authorities seem to be now well settled that it cannot. In an early English case, that of Tate v. Hilbert,[11] the court held "that the testator's note cannot be the "subject of a gift *causa mortis*, because it is "a promise without consideration." It is not the thing itself which is delivered, but only a promise to deliver it.

Justice Waite said in Raymond v. Sellick, adm'r, etc. *et al.*:[12] "A note is merely a "promise to pay. Had the money actually "been given, the law would have left it in the "donee's possession, but it cannot compel "the execution of a parol promise to give. If "the maker had lived, it is not claimed that "payment of the note, if made without con- "sideration, could have been enforced against "him. It is strange that such a promise "would be void as against him and yet obli- "gatory upon his administrators. As the law "will not compel him to give, so it will not "compel them." In such a case, although the note had been delivered to him, still he would not have the right to reduce the fund which it represents to possession, for as has before been said, a parol promise without consideration, as between the parties, is absolutely void.

So of the testator's check upon his banker,

[5] Decided in 1735, and reported in 3 Peere Williams, page 358.

[6] Decided in 1746, and reported in 2 Collyer, 363, first note.

[7] Reported in 3 Atkyns, 214.

[8] Decided in 1820, and reported in 5 Maddock, p. 351.

[9] To support which: 4 Cush. 87; 1 Paige, 318; 1 Story's Equity (8th ed.), 607; 51 Pa. St. 349, and 107 U. S. Rep. 606, are cited from the mass of authorities.

[10] 107 W. S. Rep. 606.

[11] *Supra.*

[12] 10 Conn. 484.

there although the party may reduce the fund represented to possession by presenting the check and receiving payment of it before the testator's death, still if he does not do this until after the donor's death, he simply has the testator's order on a third person to pay to him a certain sum, out of money belonging to the testator, and in such third person's possession, and the testator's death revokes the authority of such third person to pay. A testator's own note can never be the subject of a gift *causa mortis*. A testator's check can only be the proper subject of such a gift when it is presented and accepted or paid before the testator's decease.

3d. What is an actual delivery in the sense above used?

The question of delivery is the most litigated of any in regard to these gifts. All courts agree that there must be a delivery of of the subject-matter of the gift. The conflict of the decisions on this point seems to have grown out of not so much a difference of opinion as to what constituted a good delivery, as from the many loose and inacurate expressions made use of by the courts in their various decisions. The better way to fully present this question seems to be to quote instances from a few of the leading cases.

In Miller v. Miller,[13] it is said: "There must "be a delivery in the testator's life-time, of "the subject-matter, or the gift will fail." In Pathrick v. Freind,[14] it appears "that the "donor must actually deliver the thing given "to the person to whom he gives." None of the courts make use of language less strong in regard to the requisite of delivery. The contention is what amounts to a delivery within the the meaning of the aforementioned propositions. It is a contention not as to the rules but as to their application. It is not necessary that the donor should literally state that he delivers the property to the donee as a gift *causa mortis*. It is the intention to give, coupled with a delivery, in pursuance of that intention, which is the true test. So in Lawson v. Lawson,[15] "if a husband on his death-"bed deliver to his wife a purse of one hun-"dred guineas and bids her to apply it to her "own use, it is a good *donatio mortis causa*." The court say in Gardner v. Parker,[16] "the "gift of a bond by delivering the same, and "saying, 'there take it and keep it,' in the "last sickness of donor, he dying two days "afterward, is a good *donatio mortis causa*."

There must be a delivery of the property, but a delivery to the donee or to some other person for his use will be sufficient.[17]

In Borneman, adm'r., etc. v. Sidlinger *et al.*,[18] it is said "that there must be an actual "delivery to perfect the gift, but it may be "made to a third person for the use of the "donee, if the third person retain possession "up to the time of the death of the donor." When this doctrine was first announced the courts, jealous as they were, that such a gift in order to be valid, should strictly come within the rules laid down by law, said in Farqharsen v. Cove,[19] that "mere delivery "to an agent, in the character of agent for "the giver would amount to nothing, it must "be a delivery to the legatee or to some one "for the legatee." In Drury v. Smith,[20] it is held "that where property is delivered to "a person by another who is upon his death-"bed, to be, if he should die of that sickness, "delivered to a nephew of deceased, such "gift was good as a *donatio mortis causa*."

In Farqharsen v. Cove, *supra*, "A person "having some Dutch bonds and the title of "certain estates, which he keeps in a box, de-"livers the key of the box to J, in whose house "he lives, and with whom he is on terms of "intimacy, and tells a third person that the "contents of the box belong to J. He, "however, keeps possession of the box, di-"recting J to open it from time to time, as "occasion requires. He also receives the "dividends due on the bonds. A few weeks "before his death, being in his eightieth year "and infirm in health, he directs his nurse to "deliver the box to J, which she accordingly "does, and J keeps the box till his death. "Upon the box being subsequently opened, "the envelope in which the bonds are con-"tained is found to be addressed in the "handwriting of the deceased to the wife "and sisters of J, with directions that it is

[13] *Supra.*
[14] *Supra.*
[15] *Supra.*
[16] 3 Maddock, 185.
[17] 1 Paige, 318; 23 Pa. St. 59; 3 Binney (Pa.), 366; 1 Peere Williams, 104; 31 Me. 429; 107 U. S. 606.
[18] 15 Me. 429.
[19] 2 Collyer, 368.
[20] 1 Peere Williams, 405.

"to be delivered unopened; and attached to "the envelope is a letter addressed by de- "ceased to the same persons, stating the "share in which each is to have the benefit "of the bonds; stating also, by way of post- "script, that the writer takes this course "solely to evade the legacy duty, and that "he recommends perfect silence on the sub- "ject."

The transaction, it is held, amounts neither to a gift *causa mortis* or a gift *inter vivos* in favor of the wife and sisters of J. There are at least three reasons apparent why the foregoing was not a good gift *causa mortis:* 1st. because the testator was not in his last illness at the time he made the gift. 2d. Because he, by the delivery of the key to the box containing the bonds, simply made J his agent. He delivered it to J simply in the character of agent for him, else why, in the first place, should he retain possession of the box, and, secondly, the fact that J opened the box when the testator required, shows that he considered himself only an agent. 3d. As far, however, as the delivery was concerned, the great and fatal objection to it was that the bonds were capable of a manual delivery. The delivery of the key to the box in which they were contained would not suffice, when the testator might have opened the box, taken out the bonds and have made a manual delivery of them. On this last point, in Ward v. Turner,[21] it is decided "in the case of a *dona-* "*tio mortis causa* an actual delivery is indis- "pensable to vest the property, if the subject- "matter is capable of delivery. If it be not "so, there must be a delivery of what is "equivalent to it in law." Also, "that in "case of stocks, delivery of receipts for pur- "chase-money of them is not sufficient to con- "stitute a *donatio mortis causa*, though strong "evidence of the intent." In this case the stocks themselves were subject to manual delivery and if the testator did not have them in his possession, he should have delivered to the donee the means of obtaining possession of them. The receipts for purchase-money would not suffice to give the donee that right.

In 64 Cal., 349, "An action was brought "to recover of the Hibernian Savings & "Loan Society a sum of money specified in "the complaint. A claim to this money was "set up by Holland Smith, as the administra- "tor of the estate of Abraham Fielding, de- "ceased. Plaintiffs proved that Fielding died "on the 12th day of May, 1880, in the city "of San Francisco; that a short time before "the 7th day of May, 1880, he became sud- "denly ill and on the day last named he had "a general accounting with the defendant, "the Hibernian Savings & Loan Society, evi- "denced by a pass-book, showing a balance "due him of $522.99. The pass-book was "put in evidence. The plaintiff then called "David Cornfoot, who testified that on Fri- "day morning Fielding requested him to take "charge of his effects, consisting of bank "books, money, and assignments of mort- "gages and deeds and other papers and re- "quested him to hold them in trust for him "until he got well and if he, Fielding, should "die, he requested him to transfer them to "his daughter Emma for her use; that this "was the condition he received them under "on the 7th day of May." The court held that to constitute a *donatio mortis causa* the gift must be made in contemplation of the near approach of death "by the donor. There must be delivery to the donee or to some other person for his use and benefit and the donor must part with all dominion over the property and the title must vest in the donee subject to the right of the donor at any time during his life to revoke the gift." It appears clearly from the statement of facts in this case that the donor did not, nor did he intend at any time, to part with his dominion over the property. Cornfoot was only constituted his agent and the testator's death revoked that ageney. Fielding only intended his daughter should have the property after his death and in order so to dispose of his property he must have done so by will.

In Chevalier, adm'r., etc. v. Wilson and wife,[22] it is laid down that "delivery by the "donor and possession by the donee are es- "sential to the validity of a parol gift. The "transmission of the property must be such "as will enable the donee to maintain an ac- "tion at law as well against the donor as all "other persons. There is no distinction be- "tween gifts *inter vivos* and gifts *causa mortis* "as to the requisite of delivery. In either "case it is essential to the validity of the gift." In a case reported in the 74 Mo., 198, the facts were as follows: The testator n con-

[21] *Supra.*

[22] 1 Texas, 161.

templation of death then imminent, made and delivered to A four checks drawn in favor of B, C, D and E, with direction to A to deliver them to the parties in whose favor they were respectively drawn, if he, the testator, should die, but if he recovered to return the checks to him. The court says: "All the authori-"ties agree that there must be an actual de-"livery of the subject of the gift by the donor. "It only differs from a gift *inter vivos* in that "it is defeasible by reclamation, the contin-"gency of survivorship or deliverance from "peril. Was there a delivery of the subject "of the gift to the payees of the check by the "testator in his life-time? His instructions "to A were that they were not to be delivered "unless he, the donor, died and were to be "held by A to be redelivered to the donor if "he recovered. A was the agent of the tes-"tator and was bound to obey his instructions, "and so doing could not have delivered the "checks to any one while the testator lived. "If they had been given to A to be held by "the payees at all events, the authorities cited "to show that a delivery to an agent or "trustees of a beneficiary is a sufficient de-"livery would be in point, but that is not the "case. The checks were given to A, not to "be delivered in the life-time of the testator, "but after his death. It was in the nature of "a testamentary disposition and possessed "none of the elements of a *donatio mortis* "*causa*. It is not necessary to determine "whether a *donatio mortis causa* can be made "of checks on a bank."

The leading case on the question of delivery in the United States is the case of Basket v. Haskell.[23] In that case a person, in expectation of death, made the following indorsement upon a bank certificate, payable to his order: "Pay to Martin Basket, of "Henderson, Ky., no one else, then not till "my death, my life seems to be uncertain. I "may live through this spell, then I will at-"tend to it myself," and after signing it, delivered it to Basket, the donee. The court there holds that "a *donatio mortis causa* must be completely executed precisely as is required in the case of gifts *inter vivos*, subject to be divested by the happening of any of the conditions subsequent annexed by law to such gifts. On the other hand, if the gift does not take effect as an executed and complete transfer to the donee of possession and title either legal or equitable during the life of the donor, it is a testamentary disposition and good only if made and proved as a will." The *chose in action* delivered must be the evidence of a subsisting obligation and must be "delivered to the donee, so as to vest him with an equitable title to the fund it represents and to divest the donor of all present control and dominion over it absolutely and irrevocably in the case of a gift *inter vivos*, but upon the recognized conditions subsequent in case of a gift *causa mortis* and that a delivery which does not confer on the donee the present right to reduce the fund into possession by enforcing the obligation according to its terms will not suffice. A delivery in terms which confers upon the donee power to control the fund only after the death of the donor, when by the instrument itself, it is presently payable is testamentary in its character and not good as a gift."[24]

4th. What are the conditions subsequent which the law annexes to gifts *causa mortis*?

There seems to be no conflict on this point and so those conditions, as laid down in Basket v. Haskel,[25] only will be referred to. Those conditions are "an actual revocation by the donor or by the donor surviving the apprehended peril or outliving the donee, or by the occurrence of a deficiency necessary to pay the debts of the deceased donor." Upon the happening of any of these conditions the gift becomes void. But there seems at first sight to be no good reason why these conditions which the law annexes to such gifts, if annexed as conditions precedent by the donor, vitiate it. In the case last referred to the court say: "It cannot be said that the condition in the indorsement which forbade payment until the donor's death was merely the condition attached by the law to every such gift. Because the condition which inheres in a gift *causa mortis* is a subsequent

[23] *Supra.*

[24] For other cases announcing the same rules see: Cline v. Jones, 111 Ill. 563, p. 571; Barnes v. People, 25 Ill. App. 136; Comer v. Comer, 120 Ill. 420; Walter v. Ford, 74 Mo, 195; McCord's Adm'r v. McCord, 77 Mo. 166; Gano v. Fisk, 43 Ohio St. 462; Young v. Young, 80 N. Y. 422; Martin v. Funk, 75 N. Y. 134; Hatch v. Atkinson, 56 Me. 324; Daniel v. Smith, 64 Cal. 346; Walsh's Appeal, 122 Pa. 177; Sterling v. Wilkinson (Va.), S. E. R. Vol. 3, p. 533; Newton v. Snyder, Adm'r, 44 Ark. 42; Gass v. Simpson, 4 Cold. (Tenn.) 294; Nicholas v. Adams, 2 Wharton (Pa.), 17.

[25] *Supra.*

condition that the subject of the gift shall be returned if the gift fails by revocation in the meantime the gift is executed, the title has vested the dominion and control of the donor has passed to the donee, while here the condition annexed by the donor to his gift is a condition precedent which must happen before it becomes a gift and as the contingency contemplated is the donor's death, the gift cannot be executed in his life-time and, consequently, can never take effect."

When there is a valid gift *causa mortis* the administrator has no right or title to the property, and if he has gained possession of the gift and converted, it can be recovered from him in an action of *assumpsit*.[26]

It seeming proper, this thesis will be closed with an extract from the opinion of the court in 56 Me. 32, as to how the law in general regards these gifts: "It requires clear and unmistakable proof, not only of an intention to give but of an actual gift perfected by as complete a delivery as the nature of the property will admit of. It not only requires the delivery to be actual and complete, such as deprives the donor of all further control and dominion, but it requires the donee to take and retain possession till the donor's death. And public policy requires these rules to be enforced with great stringency, otherwise the wholesome safeguards of our testamentary laws would be useless. It is far better that occasionally a gift of this kind should fail than that the rules of law be so relaxed as to encourage fraud and perjury."

JAMES W. HYDE.

[26] 23 Pa. St. 59.

BANKS AND BANKING—NEGOTIABLE INSTRUMENT—SET-OFF AGAINST DEPOSIT.

BEDFORD BANK V. ACOAM.

Supreme Court of Indiana, November 12, 1890.

Where a bank pays a note of a depositor, payable at the bank, it is entitled to hold the note as the equitable owner or purchaser, and to set it off in a suit to recover a balance due the depositor on a general account.

MITCHELL, J.: On the 8th day of May, 1888, John W. Acoam had a sum of money on general deposit in the Bedford Bank in Bedford, Ind. The bank on that day received a note indorsed to it for collection, payable by the depositor Stone Sons & Co., at the Bedford Bank. The bank remitted the amount due on the note, to its correspondent, and charged the account of its depositor with the sum remitted. This was done without notice to the depositor, or other authority, except such as the law implies from the fact that the note was negotiable and payable at the bank, and was duly indorsed and sent to it for collection. The depositor repudiated the act of his banker, and sued the bank to recover an alleged balance, which it is conceded he is entitled to recover, unless the bank has the right to set off the amount of the note above mentioned. There is no question but that the bank acted in good faith, nor is there any dispute but that the plaintiff below owed the note to Stone Sons & Co. It is settled that, as soon as money is deposited in a bank, the depositor and the bank assume the relation of debtor and creditor. The money at once becomes the property of the bank, and, unless the money deposited was designed for a special purpose, or unless there exists an agreement to the contrary, the bank has the right to apply a sufficient amount of the deposit to the payment of any debt due from the depositor to the bank. Lamb v. Morris, 118 Ind. 179, 20 N. E. Rep. 746. If the Bedford Bank had discounted the note of Stone Sons & Co., or taken a absolute assignment to itself of the paper, there would be no dispute about its right to retain the amount due out of the depositor's account. Is the right of the bank to set off the sum admitted to be due on the note destroyed because the amount was paid not by way of discount, but in consequence of the note having been made payable at the bank? The authorities are not agreed upon the question but upon principle and in consonance with the weight of authority, it seems to us that the right of the bank to set off the amount must be affirmed. In England it is the settled rule that, if a note is made payable to a particular bank, the maker thereby authorizes the bank to pay it out his funds on deposit, or by advancing the amount to his credit. Accordingly, in Roberts v. Tucker, 16 Adol. & E. (N. S.) 560, Parke, B., said: "If this were the ordinary case of an acceptance made payable at a banker's, there can be no question that making the acceptance payable there is tantamount to an order, on the part of the acceptor, to the banker to pay the bill to the person who is, according to the law-merchant, capable of giving a good discharge for the bill." So, in Kymer v. Laurie, 18 Law, J. Q. B. 218, certain bankers holding in their hands an amount of money on account of a depositor, paid a bill of exchange which had been made payable at their banking house when it became due, and was presented to them by the holder. No orders to pay the acceptance had been given, nor had the authority contained on the face of the bill been countermanded. It was held that the bankers had authority to apply the funds of the depositor in their hands to the payment of the acceptance. This rule, with some modifications, has been recognized almost universally by the courts in this country. Accordingly, we find it

declared in an early case (Bank v. Armstrong, 4 Dev. 519) that there can be no question that if a bank pays off a note or acceptance of a depositor, payable at the bank, this constitutes a proper debit in the account of the depositor, and in Mandeville v. Bank, 9 Cranch, 9, Chief Justice Marshall said: "By making a note negotiable in bank the maker authorizes the bank to advance on his credit to the owner of the note the sum expressed on its face." Many well-considered cases go to the full extent of holding that a note payable at a banking house is in effect the equivalent of a check or draft on the bank in favor of the holder of the note; and that the bank is in default if it allows the paper to go to protest in case the maker has money due him from the bank on account generally applicable to the payment of drafts or checks. Bank v. Henninger, 105 Pa. St. 496, 20 Cent. Law, J. 144; Indig v. Bank, 80 N. Y. 109; Ætna Nat. Bank v. Fourth Nat. Bank, 46 N. Y. See, also, Rand. Com. Paper, § 1441; 1 Daniel, Neg. Inst. § 326*a*; 2 Morse, Banks, § 557; Bolles, Banks, § 403. A contrary view has, however, been vigorously maintained. Grissom v. Bank, 87 Tenn. 356, 10 S. W. Rep. 774; Bank v. Patton, 109 Ill. 479. While we are not inclined to the view that a promissory note negotiable and payable at a bank in this State is in all respects the equivalent of a check drawn by the maker against a fund on deposit in the bank, so as to require the banker to pay the note on presentation out of funds applicable to that purpose, we can conceive of no valid reason why a note or bill thus drawn shall not be held to authorize the banker to pay, and thereby become subrogated to all the rights of the holder to the same extent as if it had purchased the paper after maturity. One who has drawn a note or bill payable at a bank must have done so for some purpose, and he cannot be heard to say, after his banker has paid a just debt for which he has given a note to which the maker claims no defense, that the payment was wholly voluntary and unauthorized. In such a case the banker who has paid the note is entitled to hold it as the equitable owner or purchaser, and is entitled to set it off in a suit to recover a balance due the depositor on a general account. The decision in Scott v. Shirk, 60 Ind. 160, upon the facts there involved is not necessarily opposed to the conclusion above. When a note, payable at a bank, is signed by three persons, one of whom has an account at the bank, it may well be said that the bank has no power to transfer money deposited by one of the makers to the payment of the note without the depositor's consent. Lamb v. Morris, *supra*. The court erred in its conclusions of law upon the facts found. Judgment reversed, with costs, with directions to the court below to restate its conclusions of law in consonance with this opinion.

NOTE.—In so far as this case holds that it is within the power of a bank to pay the note of a depositor e nt to it for collection, and, without his special assent or direction, charge it against his general account on deposit, it is certainly not the law in most, if in any, of the States in this country and we do not believe it is the law of Indiana. And, so far as we can see, the doctrine of the court, as announced, is as above stated, viz., that a bank has such right. It will be of interest to review the authorities cited by the court as upholding its decision. The case of State Bank v. Armstrong, 4 Dev. 519, does not decide the question here at issue, but simply affirms the well established principle of set-off, that where a depositor is owing money to a bank, his deposit in bank may be set-off as against it. The case of Mandeville v. Bank, 9 Cranch, 9, decides that, where a dealer with a bank had a balance to his credit upon the general cash account and died indebted to it, by judgment and upon simple contract the bank has a right, independent of the statute of set-off, to apply the balance to the latter debt. In the opinion, words were used which seem to uphold the doctrine contended for, but they may be considered as purely *dicta*, and inasmuch as the court in this declaration of law pretended to follow the authority of Rogers v. Ladbroke, 1 Bing. 93, its force as an authority is destroyed by the fact that in the latter case the bank had discounted and actually owned the note which it paid at maturity out of the maker's account as a depositor, and which it clearly had the right to do. The case of Bank v. Henninger, 105 Pa. St. 496, was a case also where the bank was the owner of the note and therefore had a right to pay it out of the maker's deposit. In this case even, a distinction was made between the bank as owner and a mere collection agent. A proposition not at all necessary to the decision of this case was asserted in the opinion which has in some respects given rise to the difficulties attending the settlement of this question. This *dictum* was to the effect that, being payable at the bank a note thus payable is equivalent to a check. For this doctrine they cite Ætna National Bank v. Fourth National Bank, 46 N. Y. 82. An examination of that case will show that it is no authority whatever upon the main proposition, and that although the court did say that the note there in issue was equivalent to a check, it was so held because the evidence showed that the parties so regarded it. But even that case, in what it decides, does not sustain the position of the Indiana court. The case of Indig v. National City Bank, 80 N. Y. 100, follows the case of Ætna National Bank v. Fourth National Bank, *supra*, in so far as the latter holds, that a note payable at a bank may be considered as equivalent to a check. Randolph on Commercial Paper, § 1441, sustains the position of the Indiana court that, where a note is made payable at a bank it amounts to a direction of the bank to pay it out of the maker's funds on deposit. But the force of the text is lost, upon an examination of the cases cited by Mr. Randolph to sustain the proposition, which are in effect only those heretofore reviewed by us with the exception of Ford v. Thornton, 3 Leigh (Va.), 693, and that also was a case where the bank was the owner of the note. Further on, Mr. Randolph calls attention to the Illinois cases holding the contrary doctrine, namely, that the bank cannot apply the funds of the maker on deposit to the payment of his note made payable at the bank. The Illinois cases directly in point on that proposition are: Ridgely National Bank v. Patton, 109, Ill. 479; Wood v. Merchants Tr. Co., 41, *Ibid.* 267. The first edition of Daniel on Negotiable Instruments took the position that a note made payable at a bank was not in effect an order on the bank to pay out of the funds of the maker, but in the last

edition Mr. Daniel says he is now convinced that this position was erroneous and that upon principle and authority he should say that a bank at whose house negotiable paper is made payable may apply, to this payment, funds of the maker held on deposit, the relations of banker and customer and the tenor of the instrument justifying the inference that the customer intended this should be so. To sustain this proposition Mr. Daniel cites the authorities heretofore discussed, with the addition of Lazier v. Horan (Iowa), 23 Alb. L. J., 150, and Thatcher v. Bank, 5 Sanford, 130. Of those cases it is only necessary to say that the first was a case where the maker before the note was due at the bank deposited money therein specifically to pay it and that the latter was a case not of a note but of an accepted bill of exchange. Morse on Banking, cited by the Indiana court as authority, in one place, lays it down that the making of a note payable at a bank is equivalent to a check, and therefore that it is the duty of the bank to pay the same out of the maker's funds on deposit, citing the same old authorities heretofore reviewed with the addition of Citizen's Bank v. Carson, 32 Mo. 191, which is in no respect an authority upon the proposition, and where it is simply held that a banker is not required by law to apply a balance due by him on account current to his depositor to the payment of a liability from his customer to himself on the bill or note. On another page Mr. Morse states that a bank at which a draft or note is payable has no right without the acceptor or maker's special direction to apply thereto money on deposit, citing as authority for the proposition the Illinois cases above referred to, and also Scott v. Shirk, 60 Ind. 160, Gordon v. Muchler, 34 La. Ann. 604. It may be well to state further that, conceding that the weight of authority in England may be in accordance with the doctrine of the Indiana court, the principal English authorities upon which the latter court bases its judgment, namely, Roberts v. Tucker, 16 Adol. & E. (N. S.) 560, and Kymer v. Laurie. 18 Law J. Q. B. 218, were cases like some of the the American cases heretofore referred to, not of notes but of accepted bill of exchange, which there may be some ground for contending are in effect checks and amount to a direction to the bank to pay, as an accepted bill of exchange may be said to be the drawee's agreement to an unconditional order for the payment of money by a third party at a certain date, whereas a note is simply a promise on the part of the maker at a certain date to appropriate a certain portion of his fund to its payment. We can hardly believe that the Supreme Court of Indiana in the decision of this case, made a diligent study of the case of Grissom v. Commercial National Bank, 87 Tenn. 356, for that case contains in our view an incontrovertable argument against the position of the Indiana court, and fully shows that both upon principle and authority a note executed by the depositor of a bank is not equivalent to a check, and that the bank has no authority to pay such note to a third party in the absence of a usage or of instructions from the maker to that effect. And although the Indiana cases cited by the court, namely, Lamb v. Morris, 108 Ind. 179, and Scott v. Shirk, 60 Ind. 160, do not go to the length contended for by some, they may, notwithstanding what Judge Mitchell says, be regarded as an argument at least against the doctrine of the court in the present case. Except from the fact that in the case of Scott v. Shirk, there were three makers to the note in controversy (a fact which may be regarded as cutting no substantial figure), the case is exactly in point with the Illinois cases and the Tennessee case above referred to. For a complete citation of the authorities antagonizing the doctrine of the Indiana court, we refer the reader to the case of Grissom v. Commercial National Bank, above referred to. The court in that case though "conceding that the weight of text-book authority is in support of defendant's contention" is unable to discover that the weight of judicial decision is in the same direction and cite with approval, Newmark on Bank Deposits, § 119, which adopts the doctrine of the Illinois cases. The propositions of law bearing on this question may be succinctly stated, having in view the authorities, and bringing to bear on the question the pure light of reason, as follows: First. The bank has a right to apply the funds of a depositor to the payment of note or any other indebtedness owing to it by him. Second. A note executed by the depositor of a bank and payable at the bank is not equivalent to a check. Third. A bank has no authority or right to pay such note to a third party in the absence of usage or of instructions from the maker to that effect.

LYNE S. METCALFE, JR.

RECENT PUBLICATIONS.

THE DOCTRINE OF EQUITY. A Commentary on the Law as Administered by the Court of Chancery. By John Adams. Eighth Edition. By Robert Ralston, of the Philadelphia Bar. Philadelphia: T. and J. W. Johnson & Co. 1890.

It seems hardly necessary to say anything as to the merits of this well known treatise which is now in its eighth edition and which has long been considered the most readable and valuable to the student if not the most extensive treatise upon the principles of equity. We have no hesitation in affirming that there is no work upon the subject better adapted to the needs of the student. And as all practitioners should be students it is of equal value to them, especially as, unlike most text books on the general principles of the law, it contains a very copious citation of the leading English and American authorities upon the doctrines of equity. In this edition by Edward Ralston, of the Philadelphia bar, the notes of the former editors have been enlarged by adding references to the latest American and English decisions.

THE RULES OF PLEADING UNDER THE CODE, and the Practice Relating to Pleading, with an Appendix of Forms. By Edwin Baylies, Counsellor-at-Law, Author of "Baylies' Trial Practice," "Baylies on New Trials and Appeals," etc., etc. Rochester, N. Y.: Williamson Law Book Company, Successors to Williamson & Higbie, Law Booksellers and Publishers. 1890.

This book though prepared especially under the New York code has been adapted for use in all the code States. The most of the citations of authorities, however, appear to be from New York State. Still inasmuch as many of the codes of the newer States are founded upon the New York code, the book will be found of value in such States.

INTERSTATE EXTRADITION. By John G. Hawley. Detroit: John G. Hawley. 1890.

This little book of one hundred and seventy pages contains clearly stated and with reference to the prominent authorities the law governing the subject of interstate extradition and the essentials to the different papers used in obtaining requisitions and

warrants of arrest, with an appendix of forms of application for requisition and of warrants. There will also be found legislation recommended by the interstate extradition conference and forms of papers required in *habeas corpus* proceedings. The character of the work and its size makes it a handy compendium for the use of attorneys who have business in that line.

QUERIES ANSWERED.

QUERY No. 1.

(*To be found in Vol. 32 Cent. L. J. p. 13.*)

The power of congress to create such an exemption has been seriously questioned. See Webb v. Holt, 57 Iowa 716; Hissem v. Johnson, 27 W. Va. 672; Cranz v. White, 27 Kan. 319. S.

HUMORS OF THE LAW.

Mr Justice Norris, in the Calcutta High Court, recently delivered what is understood to be the shortest summing-up on record. It was as follows: "Gentlemen of the jury, the prisoner has nothing to say, and I have nothing to say. What have you to say?"

HIS FIRST CLIENT.—A prominent lawyer of middle age was sitting at the table with me in a dowtown cafe this morning regaling me with a choice series of anecdotes relating mainly to matters that had come up in his practice of the law. He particularly dwelt upon his first case after his admission to the bar. He had been retained by a scoundrel whose villainy had been so black that the legal *debutant* had to struggle fiercely with his conscience before he could bring himself to pocket the fee.

He was picturing to me vividly the depth of infamy reached by this rascal who had employed him, when a venerable merchant whom I have known and esteemed for many years stopped to speak to me.

"Mr. Blank," I said, "let me introduce you to my friend, Mr. Blackstone.

The merchant shook the lawyer's hand warmly.

"No need of introducing us," he remarked, "I didn't happen to notice him. We have been intimate for thirty-five years. Indeed, I was the first client he ever had!"

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCIDENT INSURANCE — Failure to Make Assessments.—A by-law providing that "any member receiving an injury while engaged temporarily, or otherwise, in an occupation more hazardous than the one in which he was engaged when insured," does not apply to a member insured as a merchant, who is accidentally killed while hunting for recreation, though the occupation of hunter is classified by the association as more hazardous than that of merchant, since hunting cannot be said to be his "occupation," even temporarily.—*Union Mut. Acc. Ass'n v. Frohard*, Ill., 25 N. E. Rep. 642.

2. ACCOUNT—Assignment.—One who has assigned an open account for value cannot maintain an action thereon in his own name for the benefit of his assignee.—*Beck v. Rosser*, Miss., 8 South. Rep. 259.

3. ACCOUNT—Evidence.—Where a petition in an action on an account is verified, and the defendant does not seek to deny the correctness of the account stated, but alleges in his answer that the account was not due when the suit was brought, it is not error for the court to permit the defendant to introduce evidence to show that the suit was prematurely brought, though the answer was not properly verified, or was not verified at all.—*Johnson v. Johnson*, Kan., 24 Pac. Rep. 1098.

4. ACCOUNT—Waiver of Auditor's Oath.—The requirement of Rev. St. Ill. ch. 2, § 7, that an auditor shall be sworn before entering upon his duties, may be waived by the parties.—*Pardidge v. Ryan*, Ill. 25 N. E. Rep. 627.

5. ACTION—Election — Deceit.—In an action against the agent of a mining company to recover money paid for stock purchased of him, the complaint contained averments sufficient to support an action of tort for fraudulent representations, and also an action *ex contractu* for a rescission of the sale. Defendant fully answered both causes of action, and made no objection to the complaint until early in the trial, when he asked that the character of the action might be determined, whereupon the court decided that it was an action for deceit, and plaintiff tried the case upon that theory: *Held*, that this amounted to an election by plaintiff, and the allegations *ex contractu* are to be regarded as a surplusage.—*Barndt v. Frederick*, Wis., 47 N. W. Rep. 6.

6. ADMINISTRATION — Claims Against Estates.—The statement of a claim presented against the estate of a decedent need not be a formal complaint, but it is sufficient if it shows the nature and amount of the claim, and a *prima facie* right to recover.—*Lockwood v. Robbins*, Ind., 25 N. E. Rep. 455.

7. ADMINISTRATOR—Writ of Entry.—An administrator of a deceased demandant in a writ of entry, who has

not been licensed to sell the land, cannot appear and prosecute the action for the purpose of recovering the rents and profits received by the tenant during the life of the demandant.—*Brigham v. Hunt*, Mass., 25 N. E. Rep. 468.

8. ADMINISTRATOR'S DEED—Acknowledgment.—A certificate of acknowledgment of an administrator's deed which recites that the administrator appeared before the officer taking the acknowledgment, and that he was the same person whose name appeared in the deed as a party thereto as administrator, shows that the person making the acknowledgment was known to the officer granting the certificate, and substantially complies with Laws Mo. 1835, which requires a certificate of acknowledgment to state that the person making the same is personally known to the officer.— *Hughes v. Sloan*, Mo., 14 S. W. Rep. 660.

9. ADMIRALTY—Seaman's Wages —The agreement of a seaman not to bring suit for his wages, if discharged, until a certain time after such discharge, is valid where the vessel on which he is employed is a harbor vessel, unable to leave the port, and where there is no voyage or limitation of the time of service.—*The Columbus*, U. S. D. C. (N. Y.), 43 Fed. Rep. 686.

10. ADMIRALTY— Shipping—Bill of Lading.—Where a bill of lading is given by a ship owner and accepted by the shipper without objection, a prior agreement for the carriage is not a final and definite statement of all the terms of the agreement between the parties, and the bill of lading is the real contract by which the mutual obligations of the parties is to be governed.—*The Caledonia*, U. S. C. C. (Mass.), 43 Fed. Rep. 681.

11. ADVERSE POSSESSION—Tax deed.— Where a person has been in the open, notorious, exclusive adverse possession of real estate, as owner, for ten years, he thereby acquires an absolute title to the land, free from the lien created by a tax-deed on the property, issued prior to the commencement of such adverse possession.—*Alexander v. Wilcox*, Neb , 47 N. W. Rep. 81.

12. APPEAL—Case Made — Authentication.— A case made, signed by the trial judge, but not attested by the clerk of the court with his signature, and the seal of the court, will not be reviewed by the supreme court for alleged errors, when challenged for want of proper authentication.—*Limerick v. Gwinn*, Kan., 24 Pac. Rep. 1097.

13. APPEAL— From County Court.—On appeal from the county court to the circuit court, the entry by one of respondent's attorneys of his name on the bar docket provided by the clerk for the convenience of attorneys does not amount to a formal entry of appearance in behalf of respondent, and hence does not operate as a waiver of the ten-days' notice of the appeal requiredo t be given in such cases by Rev. St. Mo. 1879, § 3055.— *Fisher v. Anderson*, Mo., 14 S. W. Rep. 629.

14. APPEALABLE ORDER.—An appeal will not lie from an order which refuses to modify, or modifies in a manner different from that asked, findings of fact and conclusions of law.—*Smith v. Shawano County*, Wis., 47 N. W. Rep. 95.

15. APPEAL FROM JUSTICE COURT.—Section 2125, Hill's Code, requires the transcript on appeal from a justice of the peace to be filed in the circuit court on or before the first day of the term next following the allowance of the appeal. This requirement is mandatory, and the circuit court has no authority to extend or enlarge the time.—*Carter v. Monastes*, Oreg., 25 Pac. Rep. 29.

16. ARBITRATION—Authority of Attorney.—Under Pub. St. Mass. ch. 188, providing for the decision of controversies by a submission to arbitration to be entered into and acknowledged before a justice of the peace, a submission signed, "B, Atty." but without designating the principal in the signature, is in form sufficient to bind the latter, who is named in the submission as a party thereto, and is certified to have acknowledged it by B, her attorney.—*Boyden v. Lamb*, Mass., 25 N. E. Rep. 609.

17. ASSIGNMENT FOR BENEFIT OF CREDITORS.—An assignment for the benefit of creditors, made by one citizen of New York to another, and valid under the laws of that State, will pass title to a note and mortgage on land in Florida.—*Van Wyck v. Read*, U. S. C. C. (Fla.), 43 Fed. Rep. 716.

18. ASSIGNMENT FOR BENEFIT OF CREDITORS—Dividends.—Upon an assignment for the benefit of creditors, one whose debt is secured by liens upon a portion of the debtor's property is entitled to dividends from the assignee, at the same rate with unsecured creditors, upon the whole amount of his debt, without first exhausting his securities or deducting their value or amounts realized by their sale.—*Third Nat. Bank v. Haug*, Mich., 47 N. W. Rep. 33.

19. ASSIGNMENT OF LIFE INSURANCE POLICY.—An assignee of life insurance, who reassigns a part to the insured and delivers the policy to him with the assignment so attached that they can be easily removed, is guilty of laches, which will defeat his claim as against a *bona fide* assignee of paid up insurance issued by the company on the surrender of the policy without notice of its assignment.—*Bridge v. Wheeler*, Mass., 25 N. E. Rep. 612.

20. ATTACHMENT — Affidavit. — Plaintiff's affidavit for attachment alleged that defendant was indebted to him in a named sum on a certain promissory note of specified amount, date and maturity, made to the order of K, and indorsed by defendants: *Held*, that the affidavit sufficiently alleges plaintiff's ownership of the note.—*Bank of California v. Boyd*, Cal., 25 Pac. Rep. 20.

21. ATTACHMENT— Appeal.—While the attachment is absolutely dissolved by failure to appeal within the time fixed, yet a subsequent appeal will raise the question as to the correctness of the judgment declaring the attachment wrongfully sued out.— *Lowenstein v. Powell*, Miss., 8 South. Rep. 269.

22. ATTACHMENT—Bill to Set Aside.—In Alabama, an attaching creditor, who has acquired a specific lien by levy of his writ, can maintain a bill in equity to set aside as fraudulent a prior attachment of the same property.—*Cartwright v. Bamberger*, Ala., 8 South. Rep. 264.

23. ATTORNEY AND CLIENT—Assignment of Contract.— A contract for professional services, as that of an attorney, is personal and confidential, and cannot be assigned to another without the assent of the client; and in case of such assignment without such assent, the client may declare the contract at an end, and recover certain lands conveyed as a conditional fee for the prosecution of the action.—*Hilton v. Crooker*, Neb., 47 N. W. Rep. 3.

24 BILL OF EXCEPTIONS—Filing after Term.—Under law in force in Missouri, before enactment of section 2168 (Rev. St. 1889), a bill of exceptions filed after the closing term of the cause, without any order therefor made during that term, is invalid, and cannot be considered on appeal.—*Webster County v. Cunningham*, Mo., 14 S. W. Rep. 625.

25. BOND—Liability of Sureties.—In an action by a bank on a bond conditioned that the principal should faithfully account to the bank for all money that should come into his possession, as receiving teller, the sureties, by their answer, sought to avoid liability by alleging that the principal was permitted to perform the duties of other officers of the bank, and to discharge the duties of his office in an irregular manner, and to engage in business outside the bank, contrary to its by-laws: *Held*, that these allegations, failing to show that anything was done or left undone by the bank or its officers, which impaired the power of the teller to honestly account to the bank for money and effects that come into his hands, were properly stricken out.—*Third Nat. Bank v. Owen*, Mo., 14 S. W. Rep. 632.

26. BREACH OF MARRIAGE PROMISE—Pleading.—In a suit for breach of promise, an answer is bad which alleges that the plaintiff and another conspired to defraud the defendant by setting up a false claim that the latter had promised to marry her, it not being stated

that anything was done to induce the pomise.—*Coble v. Elizroth*, Ind., 25 N. E. Rep. 544.

27. BROKERS—Commissions.—Defendant wrote to plaintiff offering him a certain commission for securing him a loan at a named rate. Plaintiff secured the money, but when defendant was informed that it was ready for him he declined to receive it, giving as his reasons that the rate of interest was not satisfactory; that he could not invest the money at once; and that he had concluded that he did not want it: *Held*, that a right of action thereupon accrued to plaintiff to recover the stipulated commission.—*Squires v. King*, Colo., 25 Pac. Rep. 26.

28. CARRIERS — Discrimination — Receiver.—The receiver of a railroad in Florida, where discrimination in freight rates is a criminal offense, has no right to make such discrimination.—*Cutting v. Florida Ry. & Nav. Co.*, U. S. C. C. (Fla.), 43 Fed. Rep. 747.

29. CARRIERS—Loss of Baggage.—A railway passenger checked to trunks to New York. They arrived there several hours before the passenger, who stopped over on the road, and were unloaded by the employees of a baggage express company, and placed in the railroad company's baggage-room. The passenger afterwards gave his checks to the baggage company, which, on calling for the trunks, found one missing: *Held*, that the baggage company was not liable for the lose.—*Ailin v. Westcott*, N. Y., 25 N. E. Rep. 503.

30. CARRIERS—Passenger—Res Gestæ.—A passenger having, on alighting from a train on a dark night, fallen into a pile of wood, his statement that the conductor made him get off where he fell, made within 15 minutes, while he was still uttering groans and exclamations of pain, is admissible as *res gestæ*. Collard, J., dissenting.—*International & G. N. R. Co. v. Smith*, Tex., 14 S. W. Rep. 642.

31. CARRIERS—Transfer of Ticket.—A round-trip excursion ticket used by the purchaser in going to the station named therein, and then sold and transferred, no restriction appearing, is valid in the hands of the holder, and entitles him to a return passage, subject to the prescribed limitations as to time, etc.—*Carsten v. Northern Pac. Ry. Co.*, Minn., 47 N. W. Rep. 49.

32. CARRIERS OF GOODS—Liability for Loss.—Where a carrier, after informing the owner of goods delivered to it for transportation that they will be held at place of receipt till the freight charges are prepaid, ships the goods without payment, and without notice to the owner, it is liable for damages resulting from such premature shipment.—*Campion v. Canadian Pac. Ry. Co.*, U. S. C. C. (Ill.), 43 Fed. Rep. 775.

33. CARRIERS OF GOODS — Receivers. — In a suit against the receiver of a railroad, appointed by a court of competent jurisdiction, for damage to freight while he was poerating the road, a judgment against the company is erroneous, the latter having been made a party by an amended petition, alleging that the receiver had been discharged, and all the property in his hands returned to the company, but no facts being alleged or proved making the company liable for loss, which occurred while the road was operated by the receiver.—*Texas & Pac. Ry. Co. v. Adams*, Tex., 14 S. W. Rep. 666.

34. CHATTEL MORTGAGE—Description.—The description in a chattel mortgage, of a white horse as a gray horse, there being several other items of description conceded to be true, does not vitiate the mortgage, it being properly filed, as to a purchaser from the mortgagor, unless he was, in fact, after due diligence, misled by it.—*Adamson v. Fagan*, Minn., 47 N. W. Rep. 56.

35. CHATTEL MORTGAGE — Foreclosure. — A chattel mortgage to A, as mortgagee, had not been formally assigned by him to the creditor holding the debt it was given to secure, and the latter foreclosed, affixing the name of A to the notices of sale: *Held*, that the foreclosure was valid.—*Carpenter v. Artisans' Sav. Bank*, Minn., 47 N. W. Rep. 150.

36. CLERK OF COURT—Neglect of Duty.—"Willful neglect" which will justify a removal from office, within the meaning of Const. and Rev. Stat. Tex. art. 3393, is a neglect with bad or corrupt intent; and a clerk cannot be removed for refusing to transfer his office from one town to another, which is claimed by the county commissioners to be the county-seat, when the circumstances are such as to warrant him in believing, in good faith, that the town in which his office is established is the ttue county-seat. — *State v. Alcorn*, Tex., 14 S. W. Rep. 663.

37. CONSTITUTIONAL LAW.—Population may be made the basis of classification in a statute relating to counties of this State, and their internal affairs, in cases where the legislative object is one naturally incident to population.—*State v. Mortland*, N. J., 20 Atl. Rep. 673.

38. CONSTITUTIONAL LAW—Judgment Against Vessels. —The statute (section 9, ch. 83, Gen. St. 1878, a chapter relating to actions against boats and vessels) which authorizes and directs that when judgment has been rendered in favor of the plaintiff and against the boat or vessel, defendant, execution shall issue against the obligors in a bond entered into according to the provisions of the seventh section of said chapter, is not unconstitutional.—*Stapp v. The Clyde*, Minn., 47 N. W. Rep. 160.

39. CONSTITUTIONAL LAW—Judicial Powers.—Section 1 of chapter 99 of the Session Laws of 1887, is constitutional and valid. The findings and judgment of the district court, made by virtue of that statute, are of a judicial character, and are the exercise of judicial power.—*Huling v. City of Topeka*, Kan., 24 Pac. Rep. 1110.

40. CONSTITUTIONAL LAW.—Title of Act.—A bill, which has but one general object that is fairly expressed in the title thereof, is not objectionable on the ground that it contains two or more subjects.—*Kansas City & O. R. Co. v. Frey*, Neb., 47 N. W. Rep. 87.

41. CONSTITUTIONAL LAW—Titles of Laws.—An act giving authority for the construction of works to supply the City of Rahway with water was, by its terms, to take effect immediately, but it was also enacted that its provisions should remain inoperative until assented to by a majority of the voters of the city at an election held therein. A supplement to that act repealed the clause requiring the previous assent of voters, and revived and continued the original act: *Held*, the object of the latter act was sufficiently expressed by its title—"A Supplement to," etc.—to satisfy the constitutional requirements.—*Rahway Sav. Inst. v. Mayor*, N. J., 20 Atl. Rep. 756.

42. CONTRACTS—Intoxicating Liquors—Where liquor is sold to a pharmacist for the express purpose of enabling him to retail it as a beverage, in violation of law, the price of such liquor cannot be recovered by suit, even though the sale itself was not illegal.—*Kohn v. Melcher*, U. S. C. C. (Iowa), 43 Fed. Rep. 641.

43. CONTRACT—Quantum Meruit —Plaintiff contracted with defendant to act as master of his steamer, receiving a certain amount per year, and as soon as the net earnings of the boat amounted to a certain sum, plaintiff was to have a quarter interest in it: *Held* that, defendant having sold the boat, and thus become unable to perform his contract, plaintiff could recover the value of his services over and above the amount he was paid under the contract.—*Woodbury v. Warner*, Ark., 14 S. W. Rep. 671.

44. CONTRACT—Support.—From the mere fact that a grandson lived with, and made his home with, a grandfather before he became of age, and rendered him service, the law will not imply any contract to pay therefor.—*Murphy v. Murphy*, S. Dak., 47 N. W. Rep. 143.

45. CONTRACT—Waiver.—A clause in an agreement that "no one has any authority to add to, abridge, or change it in any manner" does not invalidate a waiver of the provisions of the agreement by the agent of a corporation, one of the parties.—*D. M. Osborne & Co. v. Backer*, Iowa, 47 N. W. Rep. 70.

46. CONTRACTS—Time—Waiver.—Plaintiff contracted with defendant to build a bridge "on the present stone

piers," and bound himself to complete the work within ten months and one week after receiving notice to begin. Defendant failed to prepare the piers to receive the bridge until eleven months after it had given plaintiff notice to begin: *Held*, that such failure released plaintiff from the obligation to complete the bridge within the specified time.—*King Iron Bridge & Manuf'g Co. v. City of St. Louis*, U. S. C. C. (Mo.), 43 Fed. Rep. 768.

47. CONTRACT OF INDEMNITY—Parties.—Defendant wrote to plaintiff on the letter-head of a national bank the following letter: "A replevin suit has been commenced in your county by B & H, of this place, against W, of your place. They [B & H] being non-residents, are required to give bonds. They are good customers of ours, and if you will sign said bond we will stand between you and all harm." Defendant signed this, adding thereto the word "Cashier:" *Held* that, as this was an agreement into which a national bank could not enter, and as it did not clearly and unequivocally appear that defendant was claiming to act for the bank, and was not intending to bind himself, it would be considered his contract.—*Knickerbocker v. Wilcox*, Mich., 47 N. W. Rep. 123.

48. CONVERSION—Demand.—Where personal property is taken from the true owner tortiously, and by the wrong-doer sold to an innocent purchaser, the true owner, having been guilty of no wrong or negligence, may maintain an action for the recovery of the property or its value without previous demand.—*Rosum v. Hodges*, S. Dak., 47 N. W. Rep. 140.

49. CORPORATION — Contract—Injunction.—An agreement not to enter into a certain business will not be enforced by preliminary injunction, at suit of the assignee of the covenantee, where the defendants are abundantly solvent, and there is doubt whether the agreement, being general, is valid, whether it is supported by an adequate consideration, and whether it is assignable.—*American Preservers' Co. v. Norris*, U. S. C. C (Mo.), 43 Fed. Rep. 711.

50. CORPORATION — Officers.—The by laws of a corporation engaged in "buying and selling machinery of various kinds, and kindred articles," authorized its president to "buy and sell the articles in which the corporation deals without first obtaining the sanction or consulting the board of directors: *Held*, that he had authority to purchase a boiler on credit and give the corporation's note therefor.—*Siebe v. Joshua Hendy Machine Works*, Cal., 25 Pac. Rep. 14.

51. CORPORATIONS—Stockholders.— Where a creditor has obtained judgment against a corporation, and execution thereon has been issued and returned unsatisfied, the creditor may bring an action against a stockholder to enforce his individual liability for the corporate debt, under section 9, ch. 34, Gen. St., without joining the corporation as a party.—*Nolan v. Hazen*, Minn., 47 N. W. Rep. 155.

52. CORPORATIONS-Stockholders-Dividend.-Equity will not compel a corporation to declare a dividend at suit of a stockholder, when, although it has done a prosperous business, its assets consist largely of its plant, and of notes taken for its manufactured products mainly in distant States and upon long time, and consequently not available for discount in bank, and when, therefore, it would be compelled to borrow money, or to seriously impair its working capital to provide the necessary money.—*Hunter v. Roberts*, Mich., 47 N. W. Rep. 131.

53. CORPORATIONS — Stockholder's Liability.— In a proceeding by a creditor of a corporation against a stockholder thereof, under a statute making the stockholder liable to the creditor for the amount of his stock, in addition to any sum due thereon, said stockholder cannot purchase claims against the corporation at a discount, and then set them off against his liability at their face value. He can only set off such claims, in discharge of his liability, to the amount actually paid by him therefor.—*Abbey v. Long*, Kan., 24 Pac. Rep. 1111.

54. COVENANT—Parol Evidence.—Where land in possession of a tenant is conveyed with covenant against incumbrances, parol proof is not admissible, in action for breach of covenant, to show that the lease was not to be regarded as an incumbrance.—*Edwards v. Clark*, Mich., 47 N. W. Rep. 112.

55. COUNTIES — Officers' Fees— Mistakes.—A county cannot maintain an action to recover fees paid to a sheriff under a mutual mistake of law in supposing that they were authorized by statute.—*Painter v. Polk County*, Iowa, 47 N. W. Rep. 65.

56. COURTS—Admission of States.—Act Cong. Feb. 22, 1889, under which the Dakotas were admitted as States of the Union, provides, in section 23, that, upon the written consent of the party, all cases pending in the territorial courts at the time of admission, "whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases," shall be transferred to the said federal circuit and district courts: *Held*, that the provision applies to a case in which the plaintiff was a citizen of Dakota territory, and the defendant a citizen of another State, at the commencement of the suit.—*Dorne v. Richmond Silver Min. Co.*, U. S. C. C. (S. Dak.), 43 Fed. Rep. 690.

57. COURTS—Jurisdictional Amount— Damages.—The complaint alleged the conversion by defendant of certain property of a certain value, and that plaintiff had expended a certain amount for attorney's fees in pursuit of the property. The amount claimed in the *ad damnum* clause was the sum of these two items, and was above the jurisdictional sum of the court, though either item was below such sum: *Held* that, even if money paid for attorney's fees was not within the rule of damages, the words "for attorney's fees" could be treated as surplusage and it would leave an allegation of damages which, together with the value of the property, would bring the amount claimed within the jurisdiction of the court.—*Greenbaum v. Martinez*, Cal., 25 Pac. Rep. 12.

58. COURTS—Powers of Special Judge.—The appointment of special judges being authorized by Const. Ind. art. 7, § 10, a special judge appointed by the regularly elected judge, in accordance with 2 Rev. St. Ind. 1876, p. 11, § 4, can sign a bill of exceptions after the close of the term he was appointed to hold, the act providing that "such appointee shall, * * * if he be not a judge of any court of record, conduct the business of such court, subject to the same rules and regulations that govern circuit courts in other cases, and shall have the same authority during the continuance of the appointment as the judge elect."—*Shugart v. Miles*, Ind., 25 N. E. Rep. 551.

59. CREDITORS' BILL—Execution.—Under 2 How. St. Mich. § 6614, authorizing a judgment creditor to file a creditors' bill after his execution has been returned unsatisfied in whole or in part, and section 7664*a* requiring an execution to be made returnable in not less than 20 days, a judgment creditor who takes out an execution November 12, returnable Dec. 3, but does not place it in the hands of the officer till November 16, who returns it December 4, cannot maintain a creditors' bill as the remedy at law has not been exhausted.—*First Nat. Bank of Mauch Chunk v. Dwight*, Mich., 47 N. W. Rep. 111.

60. CRIMINAL EVIDENCE — Admissions. — Statements made by a witness at a coroner's inquest, and not denied by defendant, who was present, are not admissible in evidence against defendant on his trial for murder, on the ground that defendant by his silence confessed them, as the rule does not apply to statements given in evidence on a judicial proceeding.—*State v. Mullins*, Mo., 14 S. W. Rep. 625.

61. CRIMINAL EVIDENCE—Admissions by Co-defendant. —No conspiracy having been shown, evidence is not admissible of statements made before the commission of the crime by one jointly indicted, but not on trial, with the accused.—*Belcher v. State*, Ind. 25 N. E. Rep. 545.

62. CRIMINAL EVIDENCE— Arson.—On a trial for arson,

witnesses for the State testified to several conversations with defendant before the fire, in which the subject of previous fires on the property of the same person was discussed, and defendant said they were nothing to what would happen, and used expressions indicating an intention to burn out said owner: *Held*, that these conversations were properly admitted to show defendant's threats as to the future.—*People v. Lattimore*, Cal., 24 Pac. Rep. 1091.

63. CRIMINAL LAW—Burglary—Sentence.—Where an indictment in its first count charges defendant with burglary, which is punishable by imprisonment for a period of from one to twenty years, in the discretion of the jury, and in its third count with burglary after a previous conviction for a similar offense, which is punishable by twenty years' imprisonment, an instruction that, if the jury find the defendant guilty of burglary under the first count, they should fix the punishment at imprisonment for twenty years, is reversible error.—*Watson v. People*, Ill., 25 N. E. Rep. 867.

64. CRIMINAL LAW—Cohabitation—Teacher and Pupil.—A teacher who, during a short period of time, commits a few acts of sexual intercourse with a pupil, openly, in the school room, is not guilty of cohabitation with her, within the meaning of Code Miss. 1880, § 2700, nor can the pupil be called his mistress, within the meaning of said act.—*Brown v. State*, Miss., 8 South. Rep. 257.

65. CRIMINAL LAW—False Pretenses.—The charge of commiting the offense of obtaining money or property under false pretenses cannot be maintained in any case unless it appears not only that a false pretense was in fact made, but also that it was made with the intention of cheating or defrauding some person, and that such person was in fact cheated or defrauded to his or her injury.—*State v. Matthews*, Kan., 25 Pac. Rep. 36.

66. CRIMINAL LAW—False Pretenses.—The signature of an instrument which cannot under any circumstances, affect the signer, if he proves that it was obtained by false pretenses, is not a "valuable thing," within the meaning of section 171 of the crimes act, which makes it a misdemeanor to obtain, by false pretenses, money, wares, merchandise, goods or chattels, or other valuable thing.—*Robinson v. State*, N. J.. 20 Atl. Rep. 753.

67. CRIMINAL LAW — Self-defense.— An instruction which requires the jury to be "satisfied" that the killing was done in self-defense, in order to acquit on that ground, is erroneous.—*Wacaser v. People*, Ill., 25 N. E. Rep. 564.

68. CRIMINAL LAW — Larceny.—In trial for larceny, where the defense is that the defendant sold the stolen property in good faith for one whom he supposed to be the owner, an instruction which authorizes a conviction from the mere fact that the defendant sold property which had been stolen is reversible error.—*Graf v. People*, Ill , 25 N. E. Rep. 563.

69. CRIMINAL LAW—Obstructions on Railroad.—Upon the trial of a person charged with unlawfully placing an obstruction upon a railroad track, it is not error for the court to instruct the jury that if they believe, from the evidence, that another person than the defendant willfully placed the obstruction on the railroad track, and that if they should find, from the evidence, beyond a reasonable doubt, that the defendant was present, and encouraged, consented, aided or advised such other person to place such obstruction on the track, then the defendant would be equally guilty.—*State v. Douglass*, Kan., 24 Pac. Rep. 1118.

70. CRIMINAL LAW—Subornation of Perjury.— Under Rev. St. Ind. 1881, § 2008, making guilty of subornation of perjury "whoever suborns or procures any person to commit perjury," it must appear that defendant procured another to commit perjury, and that the perjury was committed.—*Smith v. State*, Ind., 25 N. E. Rep. 598.

71. CRIMINAL LIBEL — Instructions — Evidence.—The constitutional provision with regard to prosecutions for libel (article 1, § 5) was not intended to affect the duty of the court, on such prosecutions, to decide all questions of law relating to the admission of testimony and such other matters as are preliminary to the final submission of the case to the jury; nor to affect its duty to instruct the jury, respecting their legitimate province in the decision of the cause, and respecting those general principles of the criminal law and of the law of libel which are of a technical nature.—*Drake v. State*, N. J., 20 Atl. Rep. 747.

72. CRIMINAL LIBEL—Publication.—An allegation that the defendant "published" or "caused to be published" the libel is sufficient, even though the libel be in a foreign language, the word "published" being the proper and technical term to denote an illegal publication.—*Hass v. State*, N. J., 20 Atl. Rep. 751.

73. CRIMINAL PRACTICE—Attempt to Commit Rape.—Rev. St. Mo. 1879, § 1253, declares sexual intercourse with a female child under 12 years to be rape. Section 1645 renders it criminal for one to attempt to commit an offense prohibited by law, and in such attempt to do "any act" towards the commission of such offense: *Held*, that the mere verbal solicitation of a female child under the age of consent to permit sexual intercourse was not an attempt to commit rape.—*State v. Harney*, Mo., 14 S. W. Rep. 657.

74. CRIMINAL PRACTICE—Embezzlement.—An information for embezzlement which fully states the facts constituting the crime is good though it does not designate the accused as "bailee," "trustee," or "agent," or formally put him in any of the classes named in the statute defining embezzlement.—*People v. Nevce*, Cal., 24 Pac. Rep. 1091.

75. CUSTOM—Reasonableness —Shipping.—A custom that an agency to act for a ship in distress is irrevocable is invalid, as being unreasonable.—*Minis v. Nelson*, U. S. C. C. (Ga.), 43 Fed. Rep. 777.

76. DEATH BY WRONGFUL ACT—Injuries to Passengers.—Where an action is brought under the statute to recover damages for the benefit of the next of kin, of the deceased, and the plaintiff's testimony shows that the negligence of the deceased contributed directly to the injuries resulting in the death of the deceased, the plaintiff has failed to make out a *prima facie* right of recovery, and a demurrer interposed to the evidence should be sustained. — *Dewald v. Kansas City, F. S. & G. R. Co.*, Kan., 24 Pac. Rep. 1101.

77. DEDICATION—Highways.—*Held*, under the facts that it was too late to withdraw the offer of dedication of a street as a public highway.— *Wolfskill v. Los Angeles Co.*, Cal., 24 Pac. Rep. 1094.

78. DEDICATION OF STREETS—Acceptance.—Where the owner of land makes a map of it, showing a street upon it, and sells lots abutting upon and calling for such street, but the same is never used or accepted by the public, the purchasers, nevertheless, acquire the same rights in the street so called for as against the original owner and each other as they would if it were in fact a public street.—*Dill v. School Board*, N. J., 20 Atl. Rep. 739.

79. DESCENT AND DISTRIBUTION—Children Omitted from Will.—Under Civil Code Cal. § 1307, where at the time of the making and publishing of testator's will, by which he disinherited his daughter and gave all his property to another child, she was still living, her children did not take as heirs, though she died before testator, and her children were not mentioned in the will.—*In re Barter's Estate*, Cal., 25 Pac. Rep. 15.

80. DESCENT OF LAND—Rights of Husband.—Under St. 1887, ch. 290, §§ 1, 2, a husband whose wife died after the passage of that act takes the fee in land of that value, though, without his consent, she had devised it to another by a will made when his consent was not essential to the validity of such a devise.—*Johnson v. Williams*, Mass., 25 N. E. Rep. 611.

81. DIVORCE—Alimony.—When the wife is involved in a suit against her husband for divorce, either as plaintiff or defendant, she should be allowed alimony and

suit money out of the husband's estate or earnings, so as to place her upon an equality with him in the litigation until the same is finally determined; and these allowances may be extended to the pendency of the cause on appeal or error, whenever it is made to appear to the appellate court that the review is prosecuted in good faith, and that error has probably been committed to her prejudice.—*Pleyte v. Pleyte*, Colo., 25 Pac. Rep. 25.

82. DOWER—Homestead—Payment of Incumbrance by Widow.—A widow who has paid off an incumbrance created by her husband on land in which she claims both dower and homestead is not entitled to a lien on the estate of the heirs for the entire amount of the incumbrance, since her estate should be required to contribute its proportion of the incumbrance.—*Jones v. Gilbert*, Ill , 25 N. E. Rep. 566.

83. DOWER—Widow's Election—Conversion.—Where a testator directed his real estate to be converted and the proceeds distributed among his legal heirs, but made no legal provision whatever for his wife, she was properly required to make an election whether to abide by the will or to take under the statute.—*In re Cunningham's Estate*, Penn., 20 Atl. Rep. 714.

84. DRAINAGE—Assessment Against Town.—Where, under Laws Wis. 1887, ch. 169, upon the drainage of lands, an assessment is made against a town for benefits resulting to it, the petition for the improvement need not state that the town, as a whole, will be benefited thereby, nor specify the nature of the benefits.—*Town of Muskego v. Drainage Commissioners*, Wis., 47 N. W. Rep. 11.

85. EJECTMENTS—Lands Condemned for Railroad.—A railroad company may maintain ejectment for lands condemned under the general railroad act.—*New York S. & W. R. Co. v. Trimmer*, N. J., 20 Atl. Rep. 761.

86. EJECTMENT—Pleading.—A complaint in ejectment which avers plaintiff's ownership and defendant's possession, and exhibits as evidence of title a deed from the commissioner of State lands, is a sufficient compliance with Mansf. Dig. Ark. § 2632, requiring plaintiff to set forth the deeds on which he relies, and to state facts showing a *prima facie* title in himself.—*Fogg v. Martin*, Ark., 14 S. W. Rep. 647.

87. EMINENT DOMAIN—Compensation—Interest.—In a proceeding under the charter of Kansas City to subject private property to public use for street purposes, interest runs upon and from the date of the judgment of the circuit court, confirming an award of damages for land so taken. Sherwood and Black, JJ. dissenting.—*Plum v. City of Kansas*, Mo., 14 S. W. Rep. 657.

88. EMINENT DOMAIN—Railroad.—The commencement of a railroad, within the meaning of the general railroad law (Revision, p. 934, § 34), is the actual commencement of the work of constructing the road.—*State v. Bergen-Neck Ry. Co.*, N. J., 20 Atl. Rep. 762.

89. EQUITABLE MORTGAGE.—A clause in a lease giving the lessor a lien for rent on the buiings and machinery to be erected by the lessee on the leased land constitutes an equitable mortgage on such buildings and machinery when erected.—*First Nat. Bank v. Adams*, Ill., 25 N. E. Rep. 576.

90. ESTOPPEL—Dedication.—Where land was laid out by an association into streets, avenues, and parks, and a plat thereof filed, and lots sold with reference thereto, unauthorized statements of the president, privately made to some of the purchasers at public sale, that a certain portion of the premises not designated on the map as "public grounds" was intended as a park or "ramble," will not estop defendant from denying the dedication thereof.—*Johnson v. Shelter Island Grove & Camp-Meeting Ass'n*,. N. Y. 25 N. E. Rep. 484.

91. EVIDENCE —In an action for the value of land that defendant agreed to convey to plaintiffs in exchange for land conveyed by plaintiffs to him, testimony concerning the negotiations between the parties is admissible only for the purpose of giving a history of the transactions.—*Dikeman v. Arnold*, Mich., 47 N. W. Rep. 113.

92. EVIDENCE—Decree of Heirship.—Gen. Laws 1885, ch. 50, merely established a rule of evidence by which a "decree of heirship" was made *prima facie* evidence of certain facts, and cast the burden of disproving them upon the opposite party. After the repeal of this statute by the new Probate Code, such "decrees" ceased to have any probative force whatever, and even although admitted without objection proved nothing. — *Irwin v. Pierro*, Minn., 47 N. W. Rep. 154.

93. EVIDENCE—Letterpress Copy. — Letterpress copies may be introduced as secondary evidence, when it has been shown that the original letters have been directed and mailed in the usual course of business, and there is preliminary proof, from the party to whom they were addressed, that he had made diligent search for them, and they could not be found.—*Powell v. Wallace*, Kan., 25 Pac Rep. 42.

94. EVIDENCE—Parol.—Attached to a note was a power of attorney authorizing the confession of judgment in favor of the payee for the amount of the note with interest "independent and exclusive of a judgment said S (payee) now holds against me" for a certain amount, with interest from a certain time: *Held*, that parol evidence that at the time judgment was entered on said note the parties thereto said that it settled all interest on the old judgment was inadmissible as against the recitals of the power of attorney.—*Scott v. Amoss*, Md., 20 Atl. Rep. 724.

95. EVIDENCE—Parol.—Where a writing embraces both a receipt and a contract, the contract cannot be varied by parol any more than if it were in a separate instrument.—*Tarbell v. Farmers' Mut. El. Co.*, Minn., 47 N. W. Rep. 152.

96. EXECUTION—Sheriffs.—A plaintiff in execution whose lien is lost by the negligence of the officer in levying the execution on real estate is not bound to waive the levy, and take out another execution, without any request from the officer to do so, or offer of indemnity from him, but plaintiff can stand on his rights as fixed by that levy, and recover from the officer the value of the lost lien.—*Franklin County Nat. Bank v. Kimball*, Mass., 25 N. E. Rep. 460.

97. EXECUTION SALE— Collateral Attack.—The title of a purchaser at a sale of land under an execution issued by an assignee of a judgment rendered in favor of a county cannot be collaterly attacked by strangers to that judgment and to its assignment because the county board sold and assigned the judgment without publicly advertising it for sale for 60 days, as required by Rev. St. Ind. 1881, § 4248.—*Wells v. Bower*, Ind., 25 N. E. Rep. 603.

98. EXECUTOR'S BOND—Inventory and Account.—If the failure of an executor to file an inventory within three months, as required by his bond, is excused by his having received no assets in that time, it becomes his duty to file one a reasonable time after he first receives assets, and it is a breach of the bond not to do so; although, by Pub. St. Mass. ch. 129, § 5, and chapter 132, § 5, only one inventory is to be returned, and property thereafter received may be included in the executor's account.—*Forbes v. McHugh*, Mass., 25 N. E. Rep. 632.

99. EXECUTORS—Compensation.—Upon an appeal from the orphans' court reducing the compensation allowed by an auditor to an executor, the supreme court will take into account all the circumstances of the case, and allow such an amount as seems right, although this amount differs both from the auditor's award and the court's decree.—*McCain v. McConnell*, Penn., 20 Atl. Rep. 713.

100. FRAUDULENT CONVEYANCE.—A person who assists one to place his property beyond the reach of his creditors cannot invoke the fraud, to be relieved from the legal consequences of his act.—*Barr v. Chandler*, N. J., 20 Atl. Rep. 733.

101. FRAUDULENT CONVEYANCES—Intent.—Though the mortgage under the facts of this case, was not given in the ordinary course of trade, it was not given in contemplation of insolvency, and would not be disturbed.—*Bridges v. Miles*, Mass., 25 N. E. Rep. 461.

102. GARNISHMENT—Retroactive Statute.—Pub. Acts Mich. 1889, No. 244, which so amends How. St. Mich. §§ 8059, 8091, as to permit a plaintiff in garnishment proceedings to recover the value of property fraudulently received by the garnishees and converted into money, does not confer new rights or create new liabilities, but simply gives a new or different remedy for a pre-existing right, and hence the statute is not retroactive as applied to a garnishment proceeding commenced after the act took effect, though the garnishees seized the property upon a fraudulent chattel mortgage, and converted it into money, before the passage of the act.—*Heinman v. Solomon*, Mich., 47 N. W. Rep. 107.

103. HABEAS CORPUS—Probable Cause.—A person charge with crime will not be released on *habeas corpus* before trial on the ground of want of probable cause for commitment, when there is some evidence, other than the extrajudicial admissions of the party himself, that an offense has been committed.—*Ex parte Becker*, Cal., 25 Pac. Rep. 9.

104. HIGHWAY—Liability of Town.—Where a culvert or a bridge covered with gravel had faced abutments extending beyond and outside of the rails which marked the traveled part, the town is not liable to a traveler, who, to aid his servant, who has fallen into the water, knowingly passes beyond the traveled part at a point where the rails are down, and, while using due care, himself falls from the bridge; the town in such case not being bound to repair beyond the traveled way, and the absence of the rails not contributing to the injury.—*Harwood v. Oakham*, Mass., 25 N. E. Rep. 625.

105. HIGHWAYS—Obstruction.—In a suit against a city for damages caused by the collision of a wagon with a post set within the limits of a sidewalk, evidence that the post was in a part of the highway which had been traveled by vehicles before the sidewalk was made, some seven years before the accident, is not relevant.—*Herbert v. City of Northampton*, Mass., 25 N. E. Rep. 467.

106. HOMESTEAD—Assignment of Certificate to School Lands.—D held a certificate of sale of school lands, and with his wife was occupying the land as a homestead, and he made an assignment of the certificate to B, the wife not affixing her signature to the assignment; but they surrendered the possession of the land to B, who, and his assigns thereafter, continued in possession: *Held*, the assignment was void.—*Law v. Butler*, Minn., 47 N. W. Rep. 53.

107. HOMESTEAD—Conveyance.—Joint consent by the husband and wife to the alienation of the homestead need not necessarily be expressed in writing, to fulfill the constitutional requirements.—*Dudley v. Shaw*, Kan., 24 Pac. Rep. 1114.

108. HOMESTEAD—Equitable Title.—An unmarried man conveyed land to his brother, without consideration, and in fraud of his creditors, upon the understanding that he would reconvey when requested, taking from him a power of attorney authorizing him to convey and control the land. Both the deed and the power were duly recorded. He afterwards married, and went to live upon the land. A quitclaim deed executed to him by his brother was never put upon record: *Held*, in proceedings to foreclose two mortgages executed by him as his brother's attorney in fact, that at the time of his marriage he had no interest in the land which the law would enforce, and to which a right of homestead could attach.—*Johnston v. McPherran*, Iowa, 47 N. W. Rep. 60.

109. HOMESTEAD—Hotel Property.—Under How. St. Mich. § 7721, providing among other things, for a homestead in "a quantity of land not exceeding in amount one lot, being within a recorded town plat or city or village, and the dwelling-house thereon and its appurtenances, owned and occupied by any resident of this State," a homestead may be had in an hotel and the land on which it stands, although it is built upon two lots in a platted village.—*King v. Welburn*, Mich., 47 N. W. Rep. 106.

110. HUSBAND AND WIFE—Gift—Delivery.—A statement by a husband to his wife that he has certain bonds which are to be hers, when not accompanied by delivery of the bonds or any change in his treatment of them, does not pass title to the bonds, or make him liable to her for their conversion.—*Backer v. Meyer*, U. S. C. C. (Ark.), 43 Fed. Rep. 702.

111. HUSBAND AND WIFE—Husband's Agency.—The authority of a husband to borrow money for his wife upon a note signed by both of them cannot be shown by the husband's declarations at the time of securing the loan, or afterwards.—*Three Rivers Nat. Bank v. Gilchrist*, Mich., 47 N. W. Rep. 104.

112. HUSBAND AND WIFE—Surety.—Under Rev. St. Ind. 1881, § 5119, making a contract of suretyship void as to a married woman, she may defend against a note executed without consideration jointly with her husband for land conveyed to him, though she agreed to occupy the place of principal.—*Thacker v. Thacker*, Ind. 25 N. E. Rep. 595.

113. HUSBAND AND WIFE — Wife's Separate Estate.—Even prior to the married woman's act of 1875, (Rev. St. 2879, § 3296), a husband might invest his wife's antenuptial chattel property with the character of separate estate in equity, by agreement and a uniform course of conduct thereto during their marriage.—*Roberts v. Walker*, Mo., 14 S. W. Rep. 681.

114. INJUNCTION—Board of Water Commissioners.—The part of section 10, ch. 110, Sp. Laws 1885, under which chapter the defendant is organized, providing that "no injunction shall be maintained against the board of water commissioners restraining them from the use of the lands," etc., is applicable, not to a case where the board has committed a trespass, or caused a nuisance upon land not taken by it, but only to a case where it has taken land for its use as a part of its system of works.—*Eisenmenger v. Board of Water Commissioners*, Minn., 47 N. W. Rep. 156.

115. INJUNCTION—Common Nuisance.—Several owners of distinct tenements may join in a suit to restrain a nuisance, or other grievance, which is common to all of them, affecting each in a similar way, but may not so join when the object of the suit is to restrain that which does a distinct and special injury to each of their properties.—*Rowbotham v. Jones*, N. J., 20 Atl. Rep. 731.

116. INJUNCTION—Dissolution—Damages.—Under Rev. St. Ill. ch. 69, § 12, which provides that on dissolution of an injunction the court of chancery shall assess damages, such damages may be assessed on the partial dissolution of an injunction.—*Walker v. Prichard*, Ill., 25 N. E. Rep. 573.

117. INSURANCE—Conditions — Waiver.— The right to forfeit an insurance policy for false warranties by the assured as to the age, size and condition of the insured premises, and the number of stovepipes therein, is waived by the action of the insurance company in permitting successive proofs of loss to be made, and objecting to the same on the grounds of form, after it has obtained knowledge of the fact that the warranties were false.—*German Ins. Co. v. Gibson*, Ark., 14 S. W. Rep. 672.

118. INSURANCE—Conditions of Policy.—A fire insurance policy covered a building "occupied by assured as a dwelling-house," and provided that, "if the risk shall be increased from any cause whatever, within the knowledge of the assured, * * * the company shall not be liable therefor: *Held*, that the phrase "occupied by the assured as a dwelling-house," was not a warranty, but was a mere matter of description, and a lease of part of the building did not avoid the policy.—*Hefron v. Kittanning Ins. Co.*, Pa., 20 Atl. Rep. 698.

119. INSURANCE — Pleading.—After a verdict a complaint on an insurance policy on a building and contents, alleging that plaintiff was the owner of the property at the time of its destruction by fire, sufficiently alleges ownership in fee of the real estate.—*Phœnix Ins. Co. v. Wilson*, Ind., 25 N. E. Rep. 592.

120. INTERPLEADER.—Under Rev. St. Ind. 1881, § 273, authorizing the finding of interpleaders in actions "upon a contract, or for specific real or personal prop-

erty," a tenant sued for rent may interplead adverse claimants.—*Hall v. Craig*, Ind., 25 N. E. Rep. 538.

121. INTOXICATING LIQUORS—Clubs.—On an indictment for maintaining a place kept by a "club" for the purpose of selling and distributing intoxicating liquors, there is no variance, though the club is incorporated under a name other than that stated in the indictment, it being as well known by one name as by the other.—*Commonwealth v. Jacobs*, Mass., 25 N. E. Rep. 463.

122. INTOXICATING LIQUORS—Constitutionality of Local Option Law.—Pub. Acts Mich. 1889, No. 207, entitled "An act to prohibit the manufacture, sale," etc., of intoxicating liquor, and "to authorize and empower the board of supervisors of the several counties * * * to prohibit" its manufacture and sale after the electors of the county have voted in favor of such prohibition, embraces only one object in its title, which is to prohibit the manufacture, sale, etc., of intoxicating liquors at the option of the local authorities of any county in the State.—*Feek v. Township Board*, Mich., 47 N. W. Rep. 37.

123. INTOXICATING LIQUORS—Constitutional Law—Interstate Commerce.—Under Act Ark. April 3, 1889, § 12, so far as it authorized the sale of wine made from grapes grown on the premises, and prohibited the sale of wine made from grapes grown out of the State, it violated the federal constitution. — *State v. Deschamps*, Ark., 14 S. W. Rep. 653.

124. INTOXICATING LIQUORS—License.—The fact that the number of remonstrants against granting a retail liquor license exceeds the number of petitioners therefor is not conclusive on the court of quarter sessions that the license is not a matter of public necessity; but its decision against granting the license, based on such remonstrances, is not an abuse of discretion, and *mandamus* will not issue to compel it to grant the license.—*In re Sparrow*, Pa., 20 Atl. Rep. 711.

125. INTOXICATING LIQUORS—Regulation of Saloons.—Cities being authorized by Rev. St. Ind. 1881, § 3106, pl. 13, to regulate and license all places kept for the sale of intoxicating liquors, and by section 3151 to regulate all places where liquors are sold to be used on the premises, an ordinance is valid which requires saloons to be closed from 11 o'clock p. m. to 5 o'clock a. m., during which hours all screens and other obstructions shall be removed, so as to give an unobstructed view of the interior.—*Decker v. Sargeant*, Ind., 25 N. E. Rep. 458.

126. JUDGMENT—Bona Fide Purchaser.—By the amendment to section 125, ch. 66, Gen. St. 1878, found in chapter 61, Gen. Laws 1887, an order of the court vacating and setting aside a judgment made under the provisions of said section 125 does not affect the title to, or estate in, real property, as against a *bona fide* purchaser or incumbrancer thereof, in cases where the judgment has been of record in the proper county for a period of three years preceding the date of the application for relief.—*Drew v. City of St. Paul*, Minn., 47 N. Rep. 158.

127. JUDGMENT—Correction—Mistake of Clerk.—Where one of the parties is improperly designated by the clerk in entering a judgment, it is competent for the court at a subsequent term to correct the entry so that it shall correspond with the name stated in the pleadings, and with the judgment actually rendered.—*Southern Kan. Ry. Co. v. Brown*, Kan., 24 Pac. Rep. 1100.

128. JUDGMENTS — Joint and Several.— A judgment rendered in another State against parties who are not thereby expressly condemned to pay jointly and severally will not be considered in Louisiana as a solidary judgment in the absence of proof that in that State such judgment, thus rendered, would be viewed and treated as a several judgment against each defendant for the entire debt.—*Bank of Commerce v. Mayer*, La., 8 South. Rep. 260.

129. JUDGMENT—Replevin.—In an action to recover possession of personal property, a judgment for possession only, and not for possession or the value thereof, as provided by Code Civil Proc. Cal. § 667, is erroneous.—*Cook v. Aguirre*, Cal. 25 Pac. Rep. 5.

130. JUDGMENT—Replevin.—Under Rev. St. Ind. 1881, § 572, relating to judgments in replevin after dismissal of the action, the court cannot adjudge a return of the property, and in an action on the bond, defendant may show in whom title was, and defend against all but nominal damages.—*Hulman v. Benighof*, Ind., 25 N. E. Rep. 549.

131. JUDGMENT—Validity—Parties.—Where a railroad has been mortgaged to secure bonds which have been guaranteed by the State, a decree that a certain branch of the road is not subject to the mortgage lien is of no validity when made in a suit in which the bondholders are not represented, and of which the State has not been notified, and which is brought in a county in which no part of said branch road is situated.—*Central Trust Co. v. Florida Ry. & Nav. Co.*, U. S. C. C. (Fla.), 43 Fed. Rep. 751.

132. JUDICIAL SALE—Quantity of Land.—In the absence of fraud, the rule is that, where land is sold at so much for the entire parcel within certain boundaries, the price cannot be increased or diminished by a court of equity.—*Close v. Brown*, N. J., 20 Atl. Rep. 674.

133. JURISDICTION—Transfer of Causes.—A transitory action having been removed from the superior court of one county to another, before service of process or appearance by the defendants, an answer to the merits filed in the court to which the cause is removed gives jurisdiction of the person and waives any objection to the competency of the court.—*Hazard v. Wason*, Mass., 25 N. E. Rep. 465.

134. LANDLORD AND TENANT—Covenant.—A lease of "the lower store-room and cellar," and the "warehouse in rear of building," provided that the premises should be used as a boot and shoe store, and for no other purpose. It was executed while the building was in construction, and the concluding paragraph, after providing for the erection of partitions in the store-room, contained the following as a distinct sentence: "The whole room to be put in good order for the use of said secnd party: *Held* that, by the phrase "whole room," the entire premises covered by the lease was intended, and that there was an express covenant that they were to be suitable for the purpose for which they were leased.—*Bentley v. Taylor*, Iowa, 47 N. W. Rep. 58.

135. LANDLORD AND TENANT—Fixtures.—A tenant in possession, under a lease which does not provide that he may remove his fixtures and improvements, cannot, after he has surrendered possession to his landlord, reenter and remove his fixtures.—*Friedlander v. Rider*, Neb., 47 N. W. Rep. 83.

136. LANDLORD AND TENANT—Forfeiture of Lease.—In order that a landlord may avail himself of an option contained in his lease, to terminate the same for failure to pay the rent, he must give the tenant notice of his intention to declare a forfeiture.—*Cannon v. Wilbur* Neb., 47 N. W. Rep. 85.

137. LEASE — Subletting.—A lease provided that the premises "should be occupied for the sale of teas, coffees, spices and similar goods," and that the lessee "should not sublet or permit the occupancy by any other party without the written consent of the lessors." By an oral license, the lessor permitted the lessee to sublet the premises to a certain person for a music-store, the lessee to be still holden for the rent: *Held*, that this was not such a waiver of the condition against subletting as would give the right to sublet to any one else, or for any other business.—*Wertheimer v. Hosmer*, Mich., 47 N. W. Rep. 47.

138. LIFE INSURANCE—Mutual Benefit Societies.—The bringing of an action in the name of the administrator of a deceased member of a mutual benefit association, on a certificate of membership payable to the member's heirs, is harmless error, where the administrator is also the sole heir of such deceased member.—*Peet v. Great Camp*, Mich., 47 N. W. Rep. 119.

139. LIFE INSURANCE—Payment of Premiums.—Where a life insurance policy is conditioned that, if the premiums be not paid when due, the consideration of the

contract shall be deemed to have failed, and the company shall be released from all liability, a failure to perform the condition operates as a formal release to the company of all its liability under the policy, and precludes the policy-holder from any relief in equity by a bill for accounting.—*Hellner v. Mut. Life Ins. Co.*, U. S. C. C. (N. J.), 43 Fed. Rep. 623.

140. LIMITATION OF ACTIONS—Adverse Possession.—Under Rev. St. Mass. 1836 ch. 119, § 12, making the statute of limitations applicable to real actions brought by the commonwealth, the right to draw water from a great pond so as to lower its surface below the natural low-water mark, could be acquired by prescription, though the use of such ponds was by statute reserved to the public.—*Attorney-General v. Revere Copper Co.*, Mass., 25 N. E. Rep. 605.

141. LIMITATION OF ACTIONS—Mortgage.—Land held by husband and wife as tenants by the entireties was by them conveyed by absolute deed to a surety of the husband, who agreed orally to pay the debt for which he was bound and certain incumbrances on the land, and that the grantors should retain possession and have a reasonable time in which to repay. If the surety was not paid in such time, he was to sell the land, provided it could be sold for more than his advances, and account to the grantors for the balance: *Held*, in a suit to foreclose the equity of redemption, that it was not barred by Rev. St. Ind. 1881, § 292, limiting to six years actions on contracts not in writing.—*Daugherty v. Wheeler*, Ind., 25 N. E Rep. 542.

142. LIMITATION OF ACTIONS—Trespass.—In 1873, a railroad company entered on a street, and constructed and completed a grade extending the length of the street and for several miles on either side. In 1885, another company became the owner of the grade, and constructed its road thereon. In trespass against the latter company by the owner of a lot facing on the street: *Held*, that the statute of limitations began to run when the grade was completed in 1873, and the suit is barred by Rev. St. Ind. 1881, § 292, pl. 3, limiting to six years' actions for injuries to property.—*Strickler v. Midland Ry. Co.*, Ind., 25 N. E. Rep. 455.

143. LIMITATION OF CLAIM AGAINST COUNTY.—There is no statute of limitations in Mississippi that will run against a district attorney's claim against the county for fees in prosecuting criminals until after the board of supervisors has refused a demand therefor. The three years' statute runs after such refusal.—*Miller v. Board of Supervisors*, Miss., 8 South. Rep. 269.

144. LIMITATIONS—Mortgages.—Laws Mich. 1879, Act 204, provides that no suit shall be maintained to foreclose a mortgage unless commenced within 15 years after the mortgage becomes due, or after the last payment upon it, but that the act shall not apply to mortgages which became due, or upon which the last payment was made, 15 years or more before its passage, and that, as to them, foreclosure may be brought within five years after the act takes effect: *Held*, that the act is not retroactive, except as provided, and does not apply to a mortgage upon which the last payment was made less than 15 years before its passage.—*McKesson v. Davenport*, Mich., 47 N. W. Rep. 100.

145. MANDAMUS—Dissolution of Preliminary Injunction.—*Mandamus* will not issue to a judge to compel the dissolution of a preliminary injunction which, whether right or wrong, has spent its principal force; but the defendant in the injunction proceeding will be left to his appeal from the action of the judge on the final hearing, when the entire merits will come before the supreme court.—*Mills v. Brevoort*, Mich., 47 N. W. Rep. 128.

146. MANDAMUS—Jurisdiction—Pleading.—Under the provisions of the statute, a judge of the district court sitting at chambers, at any time and place within his judicial district, has the power and jurisdiction to hear and determine an application for a writ of *mandamus*, and such power and jurisdiction include the allowances of a peremptory writ of *mandamus*.—*Linch v. State*, Neb., 47 N. W. Rep. 88.

147. MARRIAGE PROMISE — Consanguinity. — Where marriage between cousins is not forbidden by statute, such relationship will not mitigate or excuse a breach of promise to marry.—*Albertz v. Albertz*, Wis., 47 N. W. Rep. 95.

148. MARRIED WOMEN—Assignment of Insurance.—A married woman has no power under the enabling act, (Laws N. Y. 1840, ch. 80), authorizing her to insure her husband's life for the benefit of herself and her children, to make an assignment of the policy, and it is immaterial whether the policy was issued by a corporation created under the laws of New York or of another State.—*Brick v. Campbell*, N. Y., 25 N. E. Rep. 493.

149. MASTER AND SERVANT—Defective Appliances.—Where a car inspector negligently fails to discover that a foreign car, running on the road, is in bad order, and to report it for repairs, the company is liable for injuries to a brakeman caused by the defect.—*International & G. N. R. Co. v. Keenan*, Tex., 14 S. W. Rep. 668.

150. MASTER AND SERVANT—Evidence.—While plaintiff's decedent was employed in loading defendant's ship, the sling to the apparatus provided by defendant for loading the ship broke, precipitating freight onto deceased, causing his death: *Held*, that defendant's negligence could not be inferred from the mere breaking of the sling, in the absence of proof that it was being properly used by defendant's employees, and in the ordinary manner.—*Madden v. Occidental & Oriental S. S. Co.*, Cal., 25 Pac. Rep. 5.

151. MASTER AND SERVANT—Negligence.—In an action against a railroad company for the death of a brakeman, the evidence showed that the brakeman was run over while uncoupling cars; that the accident was caused by his foot catching between the rail and the switch rail; and that, if the switch had been properly constructed, the space between said rails would have been to great too allow his foot to catch: *Held*, that the company was liable.—*Brooks v. Chicago, R. I. & P. Ry. Co.*, Iowa, 47 N. W. Rep. 74.

152. MASTER AND SERVANT—Negligence—Pleading.—In an action by a servant against his master for personal injuries, a declaration which charges that plaintiff was injured by the negligence of defendant's servants, without alleging that they were not plaintiff's fellow-servants, is not sufficient to support a verdict.—*Joliet Steel Co. v. Shields*, Ill., 25 N. E. Rep. 569.

153. MASTER AND SERVANT—Railroad Contractors.—Chapter 93, Sess. Laws 1874, entitled "An act to define the liability of railroad companies in certain cases" (paragraph 1251, Gen. St. 1889), applies to every railroad company organized in this State, and to every railroad company doing business in this State; but its provisions do not include firms, partnerships, or individuals having servants or employees engaged in work upon the road or trains of a railroad corporation.—*Beeson v. Buesenbank*, Kan., 25 Pac. Rep. 48.

154. MECHANICS' LIENS—Filing Accounts.—Where a mechanic's lien is perfected by filing the account and affidavit required by the lien law, and the same are thereafter duly recorded in the office of the register of deeds, the subsequent withdrawal of the original verified account, so recorded, will not impair or affect the validity of the lien.—*Paul v. Nample*, Minn., 47 N. W Rep. 51.

155. MORTGAGE—Bona Fide Purchaser.—An assignee of a certificate of purchase of land took it with knowledge of an unrecorded mortgage by the assignor, and assigned it to one who had no knowledge of the mortgage. The latter assignee, having obtained a patent to the land, conveyed it to the first assignee, who conveyed it to a person having notice of the mortgage: *Held*, that the mortgage could be enforced against the last grantee.—*Huling v. Abbott*, Cal., 25 Pac. Rep. 24.

156. MORTGAGE— Priorities.—A second mortgagee of land assigned his mortgage and part of the debt secured thereby, but the assignee failed to have his assignment recorded. Subsequently the mortgagor conveyed the land to the second mortgagee: *Held*,

that the first mortgagee, which had released its mortgage, and taken a third mortgage on the land for the unpaid principal and interest due on the first, without actual knowledge of the assignment, and on the faith of the record and of the second mortgegee's representation that his mortgage had been extinguished by merger, is entitled to priority over the assignee claiming under the unrecorded assignment of the second mortgage, though such mortgage was never actually discharged of record.—*Pritchard v. Kalamazoo College*, Mich., 47 N. W. Rep. 31.

157. MORTGAGE FORECLOSURE. — The omission, in a judgment foreclosing a real estate mortgage, of a provision directing what disposition shall be made of any surplus remaining after the costs and liens are paid from the proceeds of the sale will not work a reversal of the judgment. The court may, upon application after judgment, direct the payment of the surplus to any party entitled thereto.—*Brier v. Brinkman*, Kan., 24 Pac. Rep. 1108.

158. MUNICIPAL AID TO RAILROADS.—Where the issuing of township bonds or warrants to a railroad company is dependent upon the condition that the company shall build, or cause to be built and have in operation, with cars running thereon, by lease or otherwise, its railroad from a certain city therein named, at or near the depot of another railroad company in the city: *Held*, that the building of its road within 111 1 2 feet of the limits of the city, and an arrangement by it with the other railroad company, whose road it intersects at that point, for the running of its trains over the road from its intersection to its depot within the city, and the operation of the road from the depot in the city, over its entire line, will be regarded as a substantial compliance with the condition.—*Chicago, K. & W. R. Co. v. Makepeace, Trustee*, Kan., 24 Pac. Rep. 1104.

159 MUNICIPAL CONTRACTS—Street Pavements—Lowest Bidder.—The charter of the city of Pittsburgh, which requires all city contracts "to be given to the lowest responsible bidder," renders illegal and void a street-paving contract awarded on specifications prepared by each of the different bidders. The term "lowest bidder" necessarily implies a common standard by which to measure the respective bids, and that common standard must necessarily be previously prepared specifications of the work to be done.—*Mazet v. City of Pittsburgh*, Penn., 20 Atl. Rep. 693.

160. MUNICIPAL CORPORATION — Condemnation. — Where the provisions of a city charter, touching the condemnation of land for streets, authorizes the common council to treat with the owner, and, upon a failure to agree, to proceed to condemn the land, the objection by the land owner that there have been no treaty or failure to agree comes too late after he has appeared in his own behalf before the board of assessors without questioning their jurisdiction in this respect.—*State v. Inhabitants of the City of Trenton*, N. J., 20 Atl. Rep. 738.

161. MUNICIPAL CORPORATION— Defective Streets.—A city charged with the duty to keep its highways in repair, and having means provided by taxation to discharge it, will be liable for negligence in its performance, if injury results.—*Maus v. City of Springfield*, Mo., 14 S. W. Rep. 630.

162. MUNICIPAL CORPORATION — Improvements—Assessment.—Under Act Cal. 1885 (St. 1885, p. 147), a property owner was not liable for more than 50 per cent. of the assessed value of his property for work called for by one resolution of intention and order, though it be let out by separate contracts, and separate assessments be made therefor.—*Kreling v. Muller*, Cal., 25 Pac. Rep. 10.

163. MUNICIPAL CORPORATION—Street Improvements. —Since the city charter of Grand Rapids, tit. 6, §§ 8, 9, constitute the city council an appellate tribunal to review the action of the commissioners appointed to levy assessments on abutting owners for street improvements, a land owner, who has taken no steps before that body for the correction of an alleged error in the commissioners' assessment on his property for benefits accruing from the widening of a street, is in no position to appeal to the court for redress, in the absence of fraud or bad faith on the part of either the commissioners or the council.—*Brown v. City of Grand Rapids*, Mich., 47 N. W. Rep. 117.

164. MUNICIPAL CORPORATION-Street Railways.—Under the power expressly granted to the city of New Orleans to regulate the use of its streets by railways, a discretion is vested as to method and means of regulation, which will not be judicially interfered with, unless manifestly unreasonable and oppressive.—*State v. Cozzens*, La., 8 South. Rep. 268.

165. MUNICIPAL IMPROVEMENTS—Constitutional Law. —The act of March 8, 1889, providing for the improvement of streets at the cost of abutting lots, is not unconstitutional as providing for taking property without due process of law, the act requiring the publication of a notice to the owners of the lots to make objections at a time specified.—*McEneney v. Town of Sullivan*, Ind., 25 N. E. Rep. 540.

166. MUNICIPAL ORDINANCE — Cider — Constitutional Law.—A city ordinance regulating the sale of cider, which is not intoxicating, by prohibiting its sale in less quantities than a gallon, and forbidding the drinking of the same at the place of sale, violates no private right, and does not unreasonably restrain trade; and the legislative power given to city councils "to enact and make all such ordinances, by-laws, rules and regulations not inconsistent with the laws of the State as may be expedient for maintaining the peace, good government and welfare of the city, and its trade and commerce," is sufficient authority for the enactment of such an ordinance.—*City of Lawrence v. Monroe*, Kan., 24 Pac. Rep. 1113.

167. NATIONAL BANKS—Excessive Loans—Directors.— The right to maintain an action under Rev. St. U. S. § 5239, to recover of a bank director the damages sustained by his bank in consequence of excessive loans made by him while serving in the capacity of director, is not affected by the fact that the comptroller has or has not procured a forfeiture of the bank's charter.—*Stephens v. Overstolz*, U. S. C. C. (Mo.), 43 Fed. Rep. 771.

168. NEGLIGENCE—Proximate Cause.—A petition in an action for personal injuries received in a fire started by defendant's engine alleged that plaintiff and his neighbor discovered the fire, and tried to put it out; that, being unsuccessful, they went to the barn to save some horses belonging to the neighbor; that when they entered the barn the fire was more than 100 feet away, and the head fire had been running towards a point at one side of the barn, but at that time it reached higher ground, and catching the full force of the wind, was driven directly towards the barn; that when the horses were unfastened, and were being taken out, the plaintiff discovered that the fire had reached the door which was the only exit, and that to escape he passed through the fire, and received the injuries complained of: *Held*, not demurrable on the ground that plaintiff's effort to save the property of his neighbor, rather than defendant's negligence in setting the fire, was the proximate cause of his injury. *Liming v. Illinois Cent. R. Co.*, Iowa, 47 N. W. Rep. 66.

169. NEGOTIABLE INSTRUMENT — Bill of Exchange. — Concerning the sufficiency of notice of protest of bill of exchange.—*Brown v. Jones*, Ind., 25 N. E. Rep. 453.

170. NEGOTIABLE INSTRUMENTS — Defenses. — In an action on a note given in renewal of a "Red Line Wheat Note," which was void for fraud and failure of consideration, the same defenses are admissible as against the original note, and when plaintiff is not a *bona fide* holder without notice, but knew of the original transaction when he purchased the note, he cannot recover. —*Hunt v. Rumsey*, Mich., 47 N. W. Rep. 105.

171. NEGOTIABLE INSTRUMENTS—Demand and Notice. —The word "agent" affixed to the signature of a promissory note is *descriptio personæ* merely, and notice of

presentment to the maker's wife, who is averred to be the principal, is insufficient to bind an indorser. Demand should be made upon the maker himself. — *Stinson v. Lee*, Miss., 8 South. Rep. 272.

172. NEGOTIABLE INSTRUMENT.— Instrument of Note After Maturity. — Where the owner and holder of a promissory note after maturity sells and indorses the note, signing his name after that of the original payee, he is an indorser and not a joint maker.— *Lank v. Morrison*, Kan., 24 Pac. Rep. 1106.

173. NEGOTIABLE INSTRUMENTS — Indorser. — Where one pays a note, on which he is indorser, by executing his own notes to the holder, who accept sthem as payment, and either cancels or delivers up the former note so as to extinguish the maker's liability to him, this is such a payment of the note as will entitle the indorser to maintain an action against the maker for the amount so paid.—*Stanley v. McElrath*, Cal., 25 Pac. Rep. 16.

174. NEGOTIABLE INSTRUMENTS—Railroad Bonds. — In a suit to enforce the collection of railroad bonds which had been declared fraudulent it appeared that the bonds were given to a firm of which plaintiff was a member in payment for work alleged to have been done for the railroad company, and that another member of said firm was an active participant in the fraud which rendered the bonds invalid: *Held*, that plaintiff was not an innocent holder. — *Smith v. Florida Cent. & W. R. Co.*, U. S. C. C. (Fla.), 43 Fed. Rep. 731.

175. NEW TRIAL—Overruling Motion Pro Forma.—It is error for a trial court to overrule a motion for a new trial merely *pro forma*, even if the case is submitted to the court for trial without a jury, by the agreement of the parties.—*State v. Summers*, Kan., 24 Pac. Rep. 1099.

176. OFFICE AND OFFICERS— Firemen — Tenure of Office.—The tenure of office act of March 24, 1885 (Supp Revision, 691), was not repealed by the act of May 2, 1885, removing the fire and police departments from political control. — *Lyon v. Board of Fire Commissioners*, N. J., 20 Atl. Rep. 757.

177. PARENT AND CHILD—Custody of Child.—The commitment of a child without proper parental care to the custody of the State board of charities, under St. Mass. 1882, ch, 181, § 3, is not a conclusive adjudication against the father's right to its custody during the term of the commitment.—*In re Kelley*, Mass., 25 N. E. Rep. 615.

178. PARTNERSHIP—Dissolution.—If, upon the dissolution of a partnership, it is agreed that the partner continuing the business shall pay the debts, such agreement is broken by mere non-payment, and the outgoing partner can maintain a suit for the breach, without having paid anything himself. And, if a clause be added to save harmless, the former is not merged in the latter, and the obligee can rest upon either. — *Miller v. Bailey*, Oreg., 25 Pac. Rep. 27.

179. PLEADING—Breach of Contract.—The defense of a former recovery is "new matter," and should be pleaded, but *held* in this case to have been litigated by consent, although not set up in the answer. — *Bowe v. Minnesota Milk Co.*, Minn., 47 N. W. Rep. 151.

180. PLEADINGS—Complaint. — A complaint before a justice of the peace is sufficient as against an assignment of error that it shows no partnership, where the title of the action describes defendants as "late partners under the name of," etc., and the bill of particulars shows a charge against both defendants jointly. — *McGregor v. Hubbs*, Ind., 25 N. E. Rep. 591.

181. PLEADING—Demurrer.—Defendant, on a demurrer to a plea, contended that the second count of the declaration disclosed no right of action, and insisted that, if his plea was adjudged insufficient, he was entitled to judgment on the demurrer, on the ground of the alleged fault in the declaration: *Held*, that such an objection must be considered as a general demurrer to the whole declaration, and, since one count is good, the objection cannot avail defendant, nor require the court to determine whether the count objected to is good or not.—*Coney v. Harney*, N. J., 20 Atl. Rep. 736.

182. POWERS—Revocation — Bank Deposits. — Where one borrows money of a bank on certain notes, and agrees to deposit money from time to time to pay them, and authorizes the bank to apply his deposits to the discharge of the notes before maturity, if it so desires, the authority thus given is a naked power, not coupled with an interest, which ceased at the depositor's death, and the bank has no authority, after notice of his death, to make such an application of moneys then standing to his credit.— *Gardner v. First Nat. Bank*, Mont., 25 Pac. Rep. 29.

183. PRACTICE—Service of Writ— Return. — A default judgment, entered on a void service and return, is void, and is not validated by a finding of the court that there was due service, for such finding is not conclusive of the fact under Code Civil Proc. Cal. § 670, subd. 1, requiring the summons, together with proof of service, to be made a part of the judgment roll in case defendant fails to answer.—*Reinhart v. Lugo*, Cal., 24 Pac. Rep. 1089.

184. PRACTICE—Writs—Service.— Where in an action before a justice of the peace the record shows that the original summons was not served before the return-day, but that afterwards, the case being continued, a summons was served, the return on which does not show that it was an *alias*, nor is that fact shown by any entry on the docket or recital in the record, a judgment founded on such service is void, as the presumption is that the original summons was executed after it was *functus officio*.— *Weems v. Raiford*, Miss., 8 South. Rep. 260.

185. PRINCIPAL AND SURETY—Appeal-bond.—Where a bond on appeal from a justice of the peace is conditioned for its prosecution to effect and for the payment of any judgment rendered against the appellant on such appeal, an order dismissing the appeal, and awarding a writ of *procedendo*, is a breach of the bond, rendering the sureties liable in an action thereon for the amount of the original judgment and costs, though the order was made on motion of the appellee, the appellant consenting.—*Wooldridge v. Rawlings*, Tex., 14 S. W. Rep. 667.

186. PRINCIPAL AND SURETY—Release.—Where a judgment creditor buys and forecloses a mortgage constituting a prior lien to his judgment, and bids in the land at the sale, the amount realized therefor at the sale is conclusive as to the value of the land, as between him and sureties of the debtor.—*Moorman v. Hudson*, Ind., 25 N. E. Rep. 593.

187. PROCESS—Foreign Corporation.—In an action against a New York corporation publishing a newspaper there, service of summons in this State, upon a person whose only connection with the company consists in receiving advertisements at the published rates, forwarding the same to the home office, receiving thence bills for the same and collecting them upon commission, is not a service upon an agent of the company, within the meaning of section 88 of the corporation act.—*Mulhearn v. Press Pub. Co.*, N. J., 20 Atl. Rep. 760.

188. PROSECUTING ATTORNEYS—Fees in Divorce Cases. —When the prosecuting attorney merely appears at the examination of the witnesses in a divorce case the parties to which have one child, and at the conclusion of the testimony announces that he does not think it necessary to contest the granting of a divorce, he is entitled to no fee, under Pub. Acts. Mich. 1887, p. 152.— *Wilcox v. Hosmer*, Mich., 47 N. W. Rep. 29.

189. PUBLIC LANDS—Cancellation of Patent.—When the government of the United States applies for equitable relief, it must, like an individual suitor, do equity on its part. In a suit to cancel a patent for land on the ground of error in issuing it, when the patentee is not guilty of fraud, it is essential for the government to return the purchase money to the patentee.—*United States v. Budd*, U. S. C. C. (Wash.), 43 Fed. Rep. 630.

190. QUIETING TITLE—Adverse Possession.—Where, in an action to quiet the title to land which is in the possession of defendant, a cross-petition setting up title by prescription is filed, and plaintiff, after answering the cross-petition asking affirmative relief, withdraws

his original petition, defendant is not precluded thereby from sustaining the averments of his cross-petition by evidence, on the ground that the plea of adverse possession and the statute of limitations is defensive merely.—*Cramer v. Clow*, Iowa, 47 N. W. Rep. 59.

191. QUIETING TITLE—Evidence.—In an action to quiet title by the grantee of a deed against a judgment debtor of the grantor, who had purchased the land at execution sale, a finding that the deed, made by a mother while ill, and in the expectation of early death, to her daughter, was made with the intention, on the grantor's part, that it should not take effect except in case of her death, and, in such case, that it should operate in lieu of a will, and take effect after her death, will not support a defense that it was made to defraud creditors, although coupled with a finding that, after the grantor's recovery, it was placed on record for the purpose of defrauding creditors.—*Mowry v. Heney*, Cal., 25 Pac. Rep. 17.

192. QUO WARRANTO—Title to Office.—Where there is fraudulent voting at an election, a *prima facie* case must be made to show that it is at least probable that sufficient false votes were cast to change the result before an information in nature of *quo warranto* will be allowed to test the title of an incumbent to his office.—*State v. Bruggemann*, N. J., 20 Atl. Rep. 730.

193. RAILROAD COMPANY—Crossing.—Where the petition charged that defendant negligently caused the rear end of a freight train to approach a street crossing and "pass rapidly" along its track and to run into his wagon and horses, whereby he was injured, and there was evidence in the case as to the speed at which the train was running, it was not error to submit the rate of speed to the jury as an element of damage.—*Annacker v. Chicago, R. I. & P. R. Co.*, Iowa, 47 N. W. Rep. 68.

194. RAILROAD COMPANIES—Fires.—If in the necessary use of fire for the production of steam, by the usual and best approved appliances, without negligence, sparks escape from a locomotive engine, and set on fire the premises of adjacent owners of property, such loss must be borne by the owner as one of the incidents of the operation of railroads.—*White v. Chicago, M. & St. P. Ry. Co.*, S. Dak., 47 N. W. Rep. 146.

195. RAILROAD COMPANIES—Injuries to Person on Track.—Plaintiff, while walking along the right of way between two tracks about 8 feet apart, was struck and injured by a train backing towards him from behind. He had seen the train pass him while going forward, and knew that it could not go more than 1,000 feet in that direction. A train on the other track prevented him from hearing the train that injured him, but he might have seen it had he looked around: *Held*, that he was guilty of contributory negligence.—*Richards v. Chicago, St. P. & K. C. Ry. Co.*, Iowa, 47 N. W. Rep. 63.

196. REMOVAL OF CAUSES—Admission of States.—The right to remove to the federal courts causes pending in the territorial courts of Dakota when the two States were admitted to the Union depends not upon Act. Cong. Aug. 13, 1888, upon removal of causes in general, but upon the enabling act of Feb. 22, 1889, § 23.—*Herman v. McKinney*, U. S. C. C. (S. Dak.), 43 Fed. Rep. 689.

197. REMOVAL OF CAUSES—Application.—Where a proper bond and petition have been filed in the State court, the omission to ask that court to act on the petition is no ground for remanding the cause, especially where no term of the State court intervenes between the filing of the petition and the motion to remand, and the judge of that court has refused to consider the petition until the court is in session.—*Brown v. Murray, Nelson & Co.*, U. S. C. C. (Iowa), 43 Fed. Rep. 614.

198. REMOVAL OF CAUSES—Federal Question.—A suit to recover property acquired by the removing defendant, as receiver of a national bank, by authority of the laws of the United States, arises under the laws of the United States, within the meaning of the removal act of 1888.—*Sowles v. Witters*, U. S. C. C. (Vt.), 43 Fed. Rep. 700.

199. REPLEVIN—Chattel Mortgage.—Where a complaint shows a sale by the mortgagor of mortgaged chattels, a removal by the purchaser, and their destruction by fire while in the purchaser's possession, it is sufficient, though it does not allege directly a conversion by him.—*Ross v. Menefee*, Ind., 25 N. E. Rep. 546.

200. RES ADJUDICATA.—A railway having been constructed along a street on which plaintiff owned two lots, a few hundred feet apart, he obtained judgment for damages to one of them arising from the construction and operation of the road: *Held*, that this was a bar to a suit for damages to the other lot, accruing prior to the filing of the complaint in the first suit, from the same cause.—*Beronio v. Southern Pac. R. Co.*, Cal., 24 Pac. Rep. 1093.

201. RESCISSION OF CONTRACT.—A contract will not be set aside on the ground of mental incapacity of one of the parties where the evidence merely shows that he was laboring under intense anxiety and depression of spirits, and that he understood the effects of what he was doing, and could exercise his will with reference thereto.—*Perry v. Pearson*, Ill., 25 N. E. Rep. 636.

202. SALE—Chattel Mortgages.—An agreement made on the sale of a stock of goods that one had advanced part of the price was to be repaid out of the proceeds of the business before the balance of the price should be paid is not an agreement to give a chattel mortgage on the goods.—*Finn v. Donahoe*, Mich., 47 N. W. Rep. 125.

203. SALE—When Title Passes.—Under a contract to cut and deliver logs, providing that a portion of the price shall be paid upon the delivery of the logs on skids at the railroad, and the balance when they are placed upon the cars, which is to be done between certain dates, the title to the logs does not pass to the purchaser when they are delivered on the skid-ways, if he then refuses to let them be scaled and delivered on the cars, as provided by the contract, because not ready to receive them.—*Whitney v. Hall*, Mich., 47 N. W. Rep. 27.

204. SALE OF LAND BY EXECUTOR—Title.—Where a person pays to an executor about 1-40 of the value of a tract of land, and in consideration therefor procures from him a quitclaim deed for such land, although in fact and in law the executor, as such, had no power or authority to sell or convey the land, and it was not the intention that any interest in the land, except such as the executor, as such, had power to convey, should pass to the grantee by such deed: *Held* that no title or interest in or to the aforesaid land passed to the grantee by the deed, or by way of estoppel, ratification, or otherwise, although the executor may, at the time of the execution of the deed, or afterwards, have had some interest in the property as heir or devisee.—*Price v. King*, Kan., 25 Pac. Rep. 43.

205. SCHOOL-BOARDS — Powers — Teacher. — Under Mansf. Dig. Ark. §§ 6265, 6266, which enjoins the board of school directors to hire "suitable teachers; to enforce all necessary rules for the government of teachers and pupils; and to visit the schools and observe the discipline and progress of the pupils—the board has power to remove a teacher for incompetency and for immorality.—*School-Dist. v. Maury*, Ark., 14 S. W. Rep. 669.

206. SCHOOL DIRECTORS—Employment of Superintendent.—A board of school directors empowered by statute without any limitation to employ a superintendent of schools may make a contract for a superintendent for a term beginning after some members of the board go out of office.—*Gates v. School District*, Ark., 14 S. W. Rep. 656.

207. SPECIFIC PERFORMANCE—Pleading.—A bill for specific performance of a contract with a husband and wife to convey the wife's lands is good as against a general demurrer, when it alleges the making of the contract, the refusal to perform, and the fact that, after the making of the contract, a third person, with knowledge thereof, levied a void and fraudulent attachment upon the land for a pretended debt of the husband, in pursuance of a conspiracy to prevent the plaintiff from acquiring the land.—*Horton v. Hubbard*, Mich., 47 N. W. Rep. 115.

208. SUBROGATION— Corporations —Insolvency. — A partner mortgaged his individual property to secure a firm debt. Subsequently, the partnership was transformed into a corporation, whose paid-up capital stock was represented to be an amount equal to the assets of the partnership. Persuant to a secret agreement that the corporation should assume the partnership debts, four fifths of these assets were subsequently withdrawn from the corporation, and used to pay such debts; *Held*, that the partner who had mortgaged his individual property, and who subsequently became the principal stockholder in the corporation, was not entitled, on the foreclosure of the mortgage, to be subrogated to the mortgagee's rights, and to collect the amount of the mortgage out of the assets of the corporation, which had meantime become insolvent. — *Warner v. Stebbins*, Mich., 47 N. W. Rep. 102.

209. TAX SALES—Purchase by State. — Act Ark. March 12, 1881, § 12, relating to the sale of lands for taxes, provides that "in case no one shall bid at such sale, the commissioner shall strike off said lands to the State, etc.: *Held*, that, in case of a sale to the State, it was not necessary that a deed should be made for the lands, as required by § 15 of the act, in the case of a sale to an individual.—*Neal v. Andrews*, Ark., 14 S. W. Rep. 646.

210. TAX-TITLES. — Where land in the possession of the owner is sold for taxes assessed in the names of persons out of possession, but claiming under tax deeds void on their face, there is nothing in the relation of the parties to estop such persons from claiming under a tax-deed given to them as purchasers at such tax-sale.—*Staley v. Leomans*, Ark., 14 S. W. Rep. 646.

211. TAXATION— Evidence of Payment. — Under Code Miss. 1880, § 516, declaring the official receipt signed by the tax-collector to be the only tax receipt which shall be valid as evidence of the payment of taxes, one who seeks to cancel an outstanding tax title to his lands, on the ground that he paid the tax for which they were sold, cannot prove payment by oral evidence.—*Edmondson v. Ingram*, Miss., 8 South. Rep. 257.

212. TELEGRAPH COMPANIES — Delay in Delivering Message. — The fact that the funeral of plaintiff's mother took place in his absence does not entitle him to recover against a telegraph company for a delay of six hours in delivering a message to those in charge of the funeral announcing that plaintiff would be there that evening, where the message was actually delivered before the burial took place, and where those in charge knew that it was impossible for plaintiff, under any circumstances, to arrive until several hours after the time of the burial. — *Western Union Tel. Co. v. Andrews*, Tex., 14 S. W. Rep. 641.

213. TENANCY AT WILL. — A written demise without reservation of rent, or named duration of term, creates a strict tenancy at will.—*Amick v. Brubaker*, Mo., 14 S. W. Rep. 627.

214. TENANTS IN COMMON. — Under How. St. Mich. §§ 7882, 7942, a tenant in common in lands cannot convey his interest in the timber thereon, and thereby make the other tenants in common co tenants with his grantee, so that the latter could bring partition for the timber, but that the only interest which such purchaser takes is the interest in the timber on such lands as in partition proceedings shall be set off to his grantor. — *Benedict v. Torrant*, Mich., 47 N. W. Rep. 129.

215. TENANTS IN COMMON— Husband and Wife. — The husband of a tenant of lands cannot obtain title as against her co tenant by purchase at a tax-sale, as the law imputes to him a knowledge of the facts which would make such a purchase by her fraudulent as against her co-tenant.—*Robinson v. Lewis*, Miss., 8 South. Rep. 258.

216. TRIAL—Directing Verdict.—In an action by an employee for personal injuries, a claim that the case should have been taken from the jury on the ground that the injury was caused by a risk assumed by plaintiff as incident to his employment, and that his negligence contributed to it, cannot be considered in the absence of a request for a direction to find for defendant.—*Bentley v. Cremer*, Penn., 20 Atl. Rep. 709.

217. TRIAL—Limiting Number of Witnesses. — Where the question of the insanity of a party is of controlling importance, it is reversible error to limit the number of witnesses that may be called to prove insanity, especially where the order is entered after some of the witnesses have testified. — *Greene v. Phœnix Mut. Life Ins. Co.*, Ill., 25 N. E. Rep. 583.

218. TRIAL—Objections Waived—Witness.— Where an answer of defendant's witness on cross-examination is stricken out because it was given too quickly to permit defendant's counsel to object to the question, but the objection is not then urged, and plaintiff's counsel passes on at once to another question, he thereby waives the first question, and his exception to the striking out of the answer is without merit.— *Barkly v. Copeland*, Cal., 25 Pac. Rep. 1.

219. TRUST—Laches.—Where the existence of a trust has been fraudulently concealed from the beneficiary by the trustee for 36 years, a delay of six months after discovering the trust before bringing suit to enforce it does not constitute laches.—*Middaugh v. Fox*, Ill., 25 N. E. Rep. 584.

220. TRUST —Parties.—A *cestui que trust* who is seeking to enforce the trust in property that can still be "ear marked" as trust property, against the administratrix of the trustee, does not come within Code Civil Proc. Cal §§ 1493, 1500, which require claims against decedent's estate to be presented within a specified time to the administratrix for allowance; for the *cestui que trust* is seeking his own property, and not to enforce a claim against the estate and property of the deceased trustee. —*Roach v. Caraffa*, Cal., 25 Pac. Rep. 22.

221. TRUST — Resulting. — Under Rev. St. Ind. 1881, § 2976, a finding that a conveyance taken in the name of a father with whom his son, a single man, was then living and working, did not create a trust, though the price was paid by the son, will not be disturbed, where it does not appear that there was satisfactory evidence that the father ever acknowledged the trust, and it does not appear who took possession, or that the son asserted ownership during the life time of the father. —*Marcilliat v. Marcilliat*, Ind., 25 N. E. Rep. 597.

222. TRUSTS—Validity.—A voluntary deed to a trustee for the benefit of the grantor's daughter, when properly executed and delivered, and possession of the land surrendered to the trustee, constitutes an executed trust, though the land is misdescribed in the deed.—*Lynn v. Lynn*, Ill., 25 N. E. Rep. 634.

223. USURY — Compound Interest. —An agreement to make interest as it matures become principal so as to bear interest, when such interest is not evidenced by separate negotiable instruments, and the rate of interest charged is the highest legal rate, constitutes usury. —*Drury v. Wolfe*, Ill., 25 N. E. Rep. 626.

224 VENDOR AND VENDEE—Abstract—Justice.—Where real estate is sold and conveyed, and everything connected with the sale and conveyance is completed, except that the costs of the abstract of title, the transferring of the title, and the recording of the deed are not paid, and, during the negotiations with reference to the purchase, sale, and conveyance, the grantor agreed to pay such costs, but afterwards failed and refused to do so, and the grantee then paid the same, and afterwards commenced an action against the grantor, before a justice of the peace, to recover the sums thus paid: *Held*, that the justice of the peace has jurisdiction to hear and determine the case. — *Duff v. Morrison*, Kan., 24 Pac. Rep. 1105.

225. VENDOR AND VENDEE—Sale of Land.—The vendor of land, which had been set off to her in a partition suit and therein described as 28 40-100 acres, sold it as the agreed price of $100 an acre, it being estimated to contain 28 40-100 acres when in fact it contained 28 40-100 acres only: *Held*, that this was such a mistake as entitled the vendee to recover by of damages for the difference between the estimated quantity and the actual quantity - *ays v. Hays*, Ind., 25 N. E. Rep. 600.